



Class F 912

Book .V34.154

OFFICIAL DONATION.

ALASKAN BOUNDARY TRIBUNAL.

THE

ARGUMENT OF THE UNITED STATES

BEFORE THE

TRIBUNAL CONVENED AT LONDON

UNDER THE

PROVISIONS OF THE TREATY BETWEEN THE UNITED
STATES OF AMERICA AND GREAT BRITAIN
CONCLUDED JANUARY 24, 1903.

WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1903.

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ARGUMENT OF THE UNITED STATES.

FIRST

STATEMENT.

In 1799 the Czar of Russia issued an Ukase granting to the Russian American Company certain privileges, and jurisdiction over the northwest coast of America, down to the 55th degree of north latitude.

On September 4, 1821, an Ukase was issued by which Russia claimed exclusive sovereignty over the northwest coast of America down to the 51st degree of north latitude, and also over one hundred miles of the Pacific Ocean, which washed the islands, and the mainland of the northwestern coasts of America. This Ukase was intended to protect and enlarge the privileges of the Russian American Company, which had been granted by the Ukase of 1799, the chief of which was the exclusive right of hunting and trading for the pelts of animals in that territory.

The Ukase of September 4, 1821 extended the limits to the 51st degree, and in addition, prohibited the navigation of the Pacific Ocean to the subjects of all other nations, within one hundred miles of such islands and coasts.

Protests were promptly made by the United States and Great Britain.

Negotiations were begun in 1821, which terminated in a treaty between Russia and the United States in 1824 and a treaty between Russia and Great Britain in 1825. The treaty of 1825 between Great Britain and Russia, among other things, defined a line separating the Russian from the British possessions as follows:

III. La ligne de démarcation entre les Possessions des Hautes Parties Contractantes sur la côte du continent et les Îles de l'Amérique Nord-ouest, sera tracée ainsi qu'il suit:

A partir du point le plus méridional de l'Île dite *Prince of Wales*, lequel Point se trouve sous la parallèle du 54me degré 40 minutes de latitude Nord, et entre le 131me

et le 133^{me} degré de longitude Ouest (Méridien de Greenwich), la dite ligne remontera au Nord de long de la passe dite Portland Channel, jusqu'au Point de la terre ferme où elle atteint le 56^{me} degré de latitude Nord: de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la Côte, jusqu'au point d'intersection du 141^{me} degré de longitude Ouest (même Méridien); et finalement, du dit point d'intersection, la même ligne méridienne du 141^{me} degré formera, dans son prolongement jusqu'à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le Continent de l'Amérique Nord-ouest.

IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l'Article précédent:

1. Que l'île dite *Prince of Wales* appartiendra toute entière à la Russie.

2. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte depuis le 56^{me} degré de latitude Nord au point d'intersection du 141^{me} degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l'Océan, la limite entre les Possessions Britanniques et la lisière de Côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la Côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.

In 1867 a treaty was entered into between the United States and Russia, by which the United States purchased from Russia all of its possessions upon the Northwest coast of America, to which was given the name of Alaska. In this treaty the cession by Russia was described in the identical language used in the treaty of 1825 between Russia and Great Britain, to define the boundary line between their respective territories.

The country from the 56th parallel to Mount St. Elias, through which the boundary line was to be drawn, had not been explored, but it was known to be mostly barren, and composed generally of snow capped mountains with many large glaciers intervening. This strip of territory was washed by the Pacific Ocean, which indented the coast with many bays and inlets, in which the tide ebbed and flowed. The boundary line was never surveyed and marked by Great Britain and Russia. Russia claimed and exercised sovereignty over all of the interior waters and their coasts. Great Britain never questioned such claim or jurisdiction, and never in any way indicated that she claimed any rights to any of them. The United States in 1867, entered into possession of, and has exercised jurisdiction over, all of these interior waters and coasts to the present time. Propositions have been made by Great Britain at different times, prior to 1898, to survey and determine the line in the interior, but these propositions in no way suggested any question as to the sovereignty

over the bays and inlets and the coasts bordering them, all of which were in the undisputed possession of the United States.

In 1892 the United States and Great Britain entered into a treaty, providing for a joint survey, for the purpose of marking the boundary. They obligated themselves in this treaty, to proceed as soon as practicable after the report, or reports, of the commissioners, to consider and establish the boundary line in question. It was provided that a report should be made within two years after the first meeting of the commissioners. By a supplemental treaty of February 3, 1894, the time was extended to December 31, 1895.

Joint surveys were made, and a joint report was submitted December 31, 1895, but it contained no recommendation for a settlement.

The discovery of gold in 1896 in the Yukon territory attracted many persons to the Klondike District. The natural pathway for them was from the Pacific Ocean up through Lynn Canal over the Chilkat and Chilkoot passes and thence into the territory of Great Britain. Along this route thousands of miners passed. The ports at the head of Lynn Canal at once assumed large commercial importance. It was not until after this that any question was officially raised as to the boundary line between Alaska and Canada extending around the heads of the bays and inlets. Although individual citizens of Canada had, at times, advanced the theory that the treaty of 1825 should be so interpreted, as to run the boundary line along the summits of mountains claimed to be parallel to the general or mainland coast, and so as to leave the heads of the bays and inlets in British territory, such a claim was never put forward by Great Britain until 1898.

After the failure to agree under the treaty of 1892, a Joint High Commission was constituted, for the adjustment of the boundary differences, which met in 1898 and 1899.

The Marquis of Salisbury, in his instructions to the British High Commissioners July 19, 1898, said:

From Portland Channel to Glacier Bay there is no such continuous range of mountains running parallel to the coast as the terms of the Treaty of 1825 appear to contemplate. That Treaty, again, provides that the line should be parallel to the sinuosities of the coast, and that it should never exceed the distance of ten leagues from the Pacific Ocean. Considering the number and size of the projections and indentations along the coast, it would be difficult to trace the boundary according to the Treaty."

Thus he stated specifically that, there "is no such continuous range of mountains running parallel to the coast as the terms of the Treaty of 1825 appear to contemplate," and that "considering the number and size of the projections, and indentations along the coast, it would be difficult to trace the boundary according to the Treaty." Notwithstanding these official declarations, as to the mountains and the coast, a position was assumed by Great Britain, in direct conflict with them. A line was claimed, as shown by map 28 of the United States Atlas, which put in British territory all of the inlets and almost all of the harbors and safe anchorages. It included much of the mining territory in the Porcupine, Berners Bay, Juneau, Snettisham, Sundun, Windham Bay and Unuk River districts, whose mineral wealth for twenty years has been, without any question, exploited by citizens of the United States. It also included the towns of Pyramid Harbor, Haines, Dyea, and Skagway, all of them situated where the United States had exercised undisputed sovereignty since 1867.

An even more astounding feature of the claim was that the line was not laid down along any part of Portland Canal, but was drawn up Clarence Strait and thence through Ernest Sound to the continent. The character of the contention put forward by Great Britain precluded all possibility of a settlement by the Joint High Commission, and the two governments, by a treaty of March 3, 1903, have, for the purpose of settling all differences, constituted this Tribunal, to whose decision seven questions are submitted.

These questions will be discussed in their order, and the provisions of the treaty of 1893, which are thought to bear upon their solution, will be referred to in the course of the argument.

SECOND.

RULES OF CONSTRUCTION AND INTERPRETATION TO BE APPLIED TO THE TREATY OF 1825 BETWEEN GREAT BRITAIN AND RUSSIA.

In the general principles by which treaties are to be interpreted is embodied the important distinction between "construction," the process through which the general sense of a treaty is derived by the application of the rules of logic to what appears upon its face, and "interpretation," the process through which the meaning

of particular terms is explained by reference to local circumstances and conditions the framers had in mind at the time.

Jurists are generally agreed in laying down certain rules of construction and interpretation as being applicable when disagreement takes place between the parties to a treaty as to the meaning or intention of its stipulations. Some of these rules are either unsafe in their application or are of doubtful applicability; and rules tainted by any shade of doubt, from whatever source it may be derived, are unfit for use in international controversy.^a

Since the time of Grotius, who devoted an entire chapter to the construction and interpretation of difficult and ambiguous terms, (*De Jure Belli ac Pacis*, ii. c. XVI.), the system of rules which he founded has been revised and reproduced by Puffendorf (V. c. XII), by Domat (Cushing's Ed. I. p. 108), by Vattel (ii. c. XVII.), and by Rutherforth (II. c. 7). The best parts of the work of each are embodied in Potter's *Dwarris on Statutes and Constitutions*, pp. 121-146, and also in Wildman's *Institutes of Int. Law*, I, pp. 176-186. These should be supplemented by the expositions of Heffter, Sec. 95; Phillimore, II, c. VIII; Calvo, Secs. 713-77; Fiore, Secs. 1117-31; Hall, Secs. 111, 112, and Savigny's exposition of "fundamental rules of interpretation" in his *System des Heutigen Römischen Rechts* (Vol. I, ch. IV., Sec. XXXIII).

No publicist of recent times is more often quoted throughout the English-speaking world than William Edward Hall, who, after rejecting all rules of interpretation of doubtful authority, says: "1.—When the language of a treaty, taken in the ordinary meaning of the words, yields a plain and reasonable sense, it must be taken as intended to be read in that sense, subject to the qualifications, that any words which may have a customary meaning in treaties, differing from their common signification, must be understood to have that meaning, and that a sense cannot be adopted which leads to an absurdity, or to incompatibility of the contract with an accepted fundamental principle of law. * * 3.—When the words of a treaty fail to yield a plain and reasonable sense they should be interpreted in such one of the following ways as may be appropriate: (a) By recourse to the general sense and spirit of the treaty as shown by the context of the incomplete,

^a Hall, *Int. Law*, p. 350.

improper, ambiguous or obscure passages, or by the provisions of the instrument as a whole. This is so far an exclusive, or rather a controlling method, that if the result afforded by it is incompatible with that obtained by any other means except proof of the intention of the parties, such other means must necessarily be discarded; there being so strong a presumption that the provisions of a treaty are intended to be harmonious, that nothing short of clear proof of intention can justify any interpretation of a single provision which brings it into collision with the undoubted intention of the remainder."^a

According to Calvo, Sec. 600 * * "The ambiguity of clauses is sometimes removed by keeping in mind the end which the parties had in view at the moment of the beginning of the negotiations, or by consulting the usages observed in the country most interested in the engagement entered into.

You may also, in order to arrive at a harmonious conclusion, examine the facts, the circumstances which immediately preceded the signature of the agreement, referring to the protocols, the procès-verbal, or to other writings addressed by the negotiators, examining the motives or the causes which have brought about the treaty,—in a word, the reason of the transaction (*ratio legis*); finally by comparing the text with other treaties, anterior, posterior or contemporary, concluded by the same parties in analogous cases.

Sec. 601. All the articles of the treaty form an indivisible whole, which loses its consistency and value if one alters one of its parts; one should not separate the clauses, nor look at one of them in particular, on its own merits, without taking into account its correlation with those which follow or precede it. One stipulation may appear doubtful, ambiguous when each expression is taken by itself, which will appear clear, precise, altogether justifiable when you consider the accord of all the agreements of which it makes a part.^b

The Supreme Court of the United States in the *Market Co. v. Hoffman*, 101 U. S., 115, has said: "We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that its significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgement, Section 2, it was said a statute ought,

^a Hall, Int. Law, pp. 350-355.

^b Droit Int., 1, pp. 727-729.

upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

See to the same effect *United States v. Fisher*, 109 U. S., p. 145. In the effort to arrive at the original meaning of the parties to a contract or convention, their subsequent acts under it are of vital significance. In the *Attorney General v. Drummond*, 1 Drury and Warren's Reports, p. 368, it was said: "Tell me what you have done under such a deed and I will tell you what that deed means." In *Insurance Company v. Dutcher*, 95 United States, 273, it was said: "There is no surer way to find out what parties meant than to see what they have done."

When the rules for the construction and interpretation of treaties, as defined by the leading publicists of the world from Grotius to Calvo, have been carefully analyzed, it appears that there is certainly a consensus of views as to the following:

(1) As all the articles of a treaty constitute an indivisible whole, the primary purpose of construction and interpretation is to extract from them, considered as a whole, the dominant intention or motive of the transaction, "*la raison d'être de l'acte (ratio legis)*."

(2) While thus seeking for the motive the court will, if necessary, put itself in the place of the parties and read the instrument in the light of the circumstances surrounding them at the time it was made and of the objects which they evidently had in view. Thus the court may "examine the facts, the circumstances, which immediately preceded the signature of the agreement, referring to the protocols, the procès-verbal, or to other writings addressed by the negotiators, examining the motives or the causes which have brought about the treaty,—in a word, the reason of the transaction (*ratio legis*)."

(3) In the effort to arrive at the original meaning of the parties to a treaty or convention, great weight should be given to their subsequent acts under it.

(4) Since the lawful interpretation of a contract ought to tend only to the discovery of the thoughts of the author or authors of that contract, as soon as we meet with any obscurity, we should seek for what was probably in the thoughts of those who drew it up and to interpret it accordingly. This is the general rule of all interpretations.

The contracting powers are obliged to express themselves in such

a manner as they mutually understand each other. If then, they ought to speak in such a manner as to be understood, it is necessary that they should employ the words in their proper signification, in the sense which custom has given them, and that they should affix to the terms they use and to all their expressions, the received signification. They are not permitted to deviate with design, and without mentioning it from the common use, and propriety of the expression; and it is presumed that they have conformed to it, while there are no pressing reasons to presume the contrary; for the presumption is in general, that things have been done as they ought. From all these incontestable truths results this rule: *In the interpretation of treaties, pacts, and promises, we ought not to deviate from the common use of the language, at least, if we have not very strong reasons for it.*

Words are only designed to express the thoughts; thus the true signification of an expression in common use, is the idea which custom has affixed to that expression. It is then a gross quibble to affix a particular sense to a word in order to elude the true sense of the entire expression.

There is not perhaps any language that has not also words which signify two or many different things, or phrases, susceptible of more than one sense. Thence arise mistakes in discourse. To employ them with design in order to elude engagements, is real perfidy, since the faith of treaties obliges the contracting parties to express their intentions clearly.

We ought always to give to expressions the sense most suitable to the subject, or the matter to which they relate, for we endeavor by a true interpretation to discover the thoughts of those who speak, or of the contracting powers in a treaty.

When one can and ought to have made known his intention we may take for true against him what he has sufficiently declared. As good faith ought to preside in conventions, they are always interpreted on the supposition that it actually did preside in them.

The rule of interpretation forbids turning the sense of the words contrary to the manifest intention of the contracting powers.

The connection and relation of things themselves serve also to discover and establish the true sense of the treaty or of any other piece.^a

^a Vattel's Law of Nations, Book II, Ch. 17, Sec. 268-286.

(5) The reason of the law, or, the treaty, that is, the motive which led to the making of it and the view there proposed is, one of the most certain means of establishing the true sense, and great attention ought to be paid to it, whenever it is required to explain an obscure, equivocal and undetermined point, either of a law or of a treaty or to make an application of them to a particular case. *As soon as we certainly know the reason which alone has determined the will of him who speaks, we ought to interpret his words and to apply them in a manner suitable to that reason alone.*^a

(6) The voice of equity requires that the conditions between the parties should be equal; this is the general rule of contracts. We do not presume to think, without very strong reasons, that one of the contracting powers has intended to favor the other to his own prejudice, but there is no danger of extending what is for the common advantage. If it then be found, that the contracting powers have not made known their will with sufficient clearness, and with all the precision required, it is certainly more conformable to equity to seek for this will in the sense most favorable to the common advantage and equality, than to suppose it in the contrary sense.^b

THIRD.

EVIDENCE TO BE CONSIDERED.

Under the title "Russian Occupation" in the British Counter case, p. 66, it is said that:

A large part of the case of the United States, and of the evidence contained in the Appendix thereto relates to the action of Russia, and subsequently of the United States in the region through which the boundary runs.

This matter is, of course, introduced pursuant to the provision at the end of Article III of the Treaty under which the tribunal sits.

After quoting from Art. 3, omitting the words "shall also," it proceeds:

That clause requires the tribunal to 'take into consideration any action of the several governments, or of their respective representatives preliminary or subsequent to the conclusion of said Treaties, so far as the same tends to show the original and effective understanding of the Parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said Treaties.'

^a Vattel's Law of Nations, Book II, Ch. 17, Sec. 287.

^b Ibid., Sec. 301.

It is submitted that the position thus taken is unsound. It is founded upon an incomplete quotation which omits significant words. It ignores altogether the provision in Art. II., and the effect of Art. III., construed in connection with it, and invokes a rule altogether so narrow as not to have possibly been within contemplation.

Art. II. provides that:

Each party may present to the tribunal all pertinent evidence, documentary, historical, geographical or topographical, including maps and charts, in its possession or control applicable to the rightful decision of the questions submitted.^a

Here the door is opened wide, with no limitation except that the evidence must be pertinent to the rightful decision of the questions submitted.

Art. III. provides:

The tribunal shall also take into consideration any action of the several governments or of their respective representatives preliminary or subsequent to the conclusion of said treaties so far as the same tends to show the original and effective understanding of the parties in respect to the limits of their several territorial jurisdictions under and by virtue of the provisions of said treaties.^b

This does not limit the provision of Art. II., but whether the Tribunal might consider it pertinent or not makes it obligatory to also take into consideration any such action of the several governments or of their respective representatives. Art. III. in like manner compels the Tribunal to consider the Treaties of 1824, 1825 and 1867. It has a discretion as to determining whether or not all other evidence introduced under Art. II. is pertinent. It has no such discretion as to that specified in the superadded provisions in Art. III.

The British Counter Case assumes that Art. III. alone must be looked to, and that all of the evidence of the United States is introduced pursuant to the provisions of that article.

Art. III. obligates the Tribunal to consider certain evidence. It does not in any way restrict its discretion as to determining what other evidence is pertinent. The context shows that it was regarded that other evidence would be pertinent, and that in addition thereto the evidence particularized in Art. III. shall also be taken into consideration. The statement that Art. III. "excludes all private action

^a U. S. C. App., p. 3.

^b U. S. C. App., p. 4.

and, *a fortiori*, all private expression of opinion, whether by map makers or others," is not supported. The pertinency and weight of such testimony are to be determined by the Tribunal. It may be of remote relevancy and of slight importance. The British Counter Case makes no specification except as to maps published by private map makers. Private map makers are historians of their times. Their work is accepted or rejected according to its intrinsic merit and their reputation. If all of the map makers of the world throughout a long period of time agree to an interpretation of a treaty, and if it be assumed that such consensus was known to all enlightened governments, then such governments are affected with knowledge of the common understanding of the world.

If with such knowledge of a common belief in respect of a matter of sovereignty over the arms and inlets of the sea and their coasts in which all maritime nations and all powers having navies are directly interested, a government publicly acts through a long period of time so as to confirm such understanding, then such acts become more solemn than if they were made without the existence of an understanding. Such understanding shows that the mind of the world was on the question and that it deemed it of importance. If it had no thought about it, then the acts of a government in regard to it, might be of no special interest and might escape notice. Such common understanding joined in by the government most interested, becomes a universally accredited historical fact. It cannot be said that such common understanding, not dissented from, but confirmed, is not pertinent in considering the weight that should be given to the official maps of Great Britain.

The British Counter Case further concludes that the action of the respective governments that can be looked to is limited to those immediately preliminary to the treaty.^a What has been said about the admissibility of evidence under Art. II. applies to this proposition. The Treaty should be interpreted in the light of the respective attitudes of the parties when they began their negotiations. Their relations to the subject-matter of controversy should be known by the Tribunal in order to better understand the language used by them in settling the controversy. The rule invoked in the British Case is narrower than that which in the courts of Great Britain

^a B. C. C., p. 66.

and the United States would apply to private litigants. Any court would admit evidence showing the attitude in which the parties stood toward the subject matter of contract. It is further said that:

In addition, the understanding which the action must tend to show is that of 'the Parties,' that is to say, of both Parties. Action by one Party not known to the other Party will not tend to show this.^a

If one party took action which showed that it understood that the Treaty meant a certain thing, and if the other party took action which showed that such party had the same understanding, and if proof of such actions be made to the Tribunal it does not make a particle of difference whether or not these separate acts of the several parties were known to the other party. If Great Britain had passed an Act of Parliament reciting that by the Treaty Russia owned all of the interior waters and coasts in question, and had penalized any trespass upon them by British subjects, would it have made any difference as to the understanding of Great Britain of the Treaty that this Act was never known to Russia? If there were such an act would the United States have to show that Russia knew of it, and assented to it before it could be admitted in evidence? All separate acts of the parties tending to show their respective understandings are admissible. If they show the same understanding they are conclusive. It is only necessary to show knowledge upon the part of the other party where it is sought to set up assent or acquiescence. In such cases knowledge must be shown or the act must have such characteristics that knowledge of it must be assumed.

FOURTH.

TERRITORIAL WATERS IN INTERNATIONAL LAW.

DISTINCTION BETWEEN THE OUTER AND INNER COAST LINE.

An eminent English publicist has said that "certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water, and either

^aB. C. C., p. 66.

form a line more or less parallel with land or compose systems of their own, in both cases enclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba the Archipiélago de los Canarios stretches from sixty to eighty miles from the mainland to La Isla de Pinos, its length from the Jardines bank to Cape Frances is over a hundred miles. * * * In cases of this sort the question whether the interior waters are, or are not, lakes enclosed within the territory, must always depend upon the depth upon the banks, and the width of the entrances. Each must be judged upon its own merits. But in the instance cited, there can be little doubt that the whole Archipiélago de los Canarios is a mere salt-water lake, *and that the boundary of the land of Cuba runs along the exterior edge of the banks.*^a

In the famous case of the *Anna* (56 Rob. Adm. 373) Lord Stowell held that the extent of territorial waters must be estimated from the outer edge of the land represented in that case by certain low mud islands formed from the alluvial wash and debris of the Mississippi river, more than three miles from the Belize, the extreme point of the main land. "It is argued," said Lord Stowell, "that the line of territory is to be taken only from the Belize, which is a fort raised on made land by the former Spanish possessors. I am of a different opinion. I think that the protection of territory is to be reckoned from these islands, and that they are the natural appendages of the coast on which they border, and from which, indeed, they are formed."

It thus appears that from *the outer coast line* of a maritime state, as defined in physical geography, is invariably measured under international law, the limit of that zone of territorial water generally known as the marine league. The boundary of Alaska,—that is, the exterior boundary from which the marine league is measured,—runs along the outer edge of the Alaskan or Alexander Archipelago, embracing a group composed of hundreds of islands. When "measured in a straight line from headland to headland" at their entrances, Chatham Strait, Cross Sound, Summer Strait and Clarence Strait, by which this exterior coast line is pierced, meas-

^aHall, Int. Law, p. 129-130.

ure less than ten miles. That fact, according to the authorities quoted in the British Counter Case, pp. 24-28, places them within the category of territorial waters. All of the interior waters touching upon the *lisière*, such as Behm Canal, Taku Inlet and Lynn Canal are, in the language of Hall, "lakes enclosed within the territory", and as such are territorial waters, regardless of their width at their entrances when measured from headland to headland.

DISTINCTION BETWEEN THE COAST LINE OF PHYSICAL GEOGRAPHY FOR THE PURPOSES OF BOUNDARY, AND THE POLITICAL COAST LINE, FOR THE PURPOSES OF JURISDICTION.

Physical geography simply reproduces the actual coast lines of maritime states, as they are defined by nature at the point of contact of the sea with the land. The following description of the coast of Maine, from an eminent geographical authority, may be taken as an apt illustration:

On the Atlantic coast Maine presents an uninterrupted succession of peniniulas, islands, and bays; and all these bays are the mouths of rivers—outlets of valleys having their origin far in the interior. Nothing similar is seen on all the territory of the Union. One must come to Norway or go to the extreme point of South America to find so long a part of the coast—400 kilometers in a straight line from the southwest to the northeast—so deeply cut up that we measure on it more than 4,000 kilometers of contact with the deep sea. All these bays of Maine are also fiords, but spacious, and which in spite of their equally rocky banks, of comparatively little elevation, receive the morning and afternoon sun, as well as that of noon, and open to mariners more ports, more anchorages, and safe shelters than all the other coasts upon the three seas of the Union.^a

It thus appears that the actual coast line of Maine, as known to physical geography, following as it must the sinuosities defined by the contact of the sea with the land, is about 4,000 kilometers, while the political coast line, superimposed upon it by operation of international law, is vastly shorter by reason of the fact that the artificial and imaginary line cuts across the heads of bays and inlets. The natural coast line, as known to physical geography, exists primarily for the purposes of boundary. The artificial coast line, as known to international law, exists only for the purposes of jurisdiction. That obvious distinction is well illustrated by Rivier

^aSee Maine, in *Nouveau Dictionnaire de Géographie Universelle*, Saint Martin, Vol. III, p. 559.

in his *Principes du Droit des Gens*. Speaking of "*La mer littorale*," he says: "The name territorial sea is applied to all the seas or portions of the sea which belong to the territory: to the littoral sea, to the interior sea, in the various acceptations of this word, to gulfs and straits. It is the general and juridical term (*le terme général et juridique*), while the others are rather physical or geographical (*physiques ou géographiques*). The term littoral sea has the advantage of a special meaning. They say also jurisdictional sea, after one of the elements of the juridical situation of that part of the sea.

The principle that the littoral sea forms a part of the territory is justified by the necessities of the preservation and security of the state, from the point of view, military, sanitary, fiscal, as well as the point of view of the interests of industry, specially of the right of fishing. The result is, for the coast and for *terra firma*, the littoral sea has the character of an accessory (*le caractère d'un accessoire*) and it cannot be taken independently of the coast (*indépendamment de la côte*). Speaking of "*Les Frontières*" he says: "I have spoken already of the frontier on the sea, and of that of the land. There exists also special limits for the wants of administration because the geographical and political frontier (*la frontière politique et géographique*) do not always answer in a sufficient manner."^a The distinction thus clearly recognized between a geographical and political frontier is too obvious to require further illustration.

If the geographical frontier happens to be on the sea or ocean, it is known as the coast, the point of contact between the sea water and the land, upon which the political frontier is superimposed as an accessory that can not be taken independently of the coast (*et qu' on ne saurait l'acquérir indépendamment de la côte*). That dependent and accessory frontier created by international law, solely for the purposes of jurisdiction, is annexed *only to the outer coast* of a maritime state which it shortens by cutting across the heads of bays and inlets, thus following what is called the general trend of the coast.

THE POLITICAL COAST LINE NOT INVOLVED IN THIS CASE.

The artificial coast line created by international law for the purposes of jurisdiction only, which, following the general trend of the coast,

^a Vol. I, pp. 145-146, 170.

cuts across the heads of bays and inlets is not involved in this case in any form, for the simple reason that *the outer coast*, to which it is exclusively an accessory, is not involved.

The entire British Case rests upon the admission that the eastern boundary of the *lisière* is to be determined with reference to the inner coast only, and on the contention that a political coast line can be predicated of this coast. In the language of the British Case (p. 24), "It seems clear that, in the whole course of these negotiations, Count Nesselrode used the term 'côte' as meaning the general line of the continent." The eastern line of the *lisière* as now contended for by Great Britain is drawn in reference to "the general line of the continent," that is, of the inner coast. The heart of that contention is that such inner coast is not the entire natural coast of physical geography, but that it is to be ignored at places and that for it shall be substituted an artificial coast line which under international law is a mere accessory to a physical coast. Such an artificial coast line relates to the outer coast only, and can have no reference whatever to the inner coast line in question. The only coast with which we are dealing is the inner coast, the physical coast, the coast defined by the contact of the sea with the land.

The result of the British claim that the line shall be drawn from headland to headland is that a principle which became established in international law for the purpose of giving additional rights as incident to the ownership is perverted to the purpose of determining what shall be considered coast. It could only apply where there was admitted sovereignty over a coast line, and then only for the purpose of giving, by enlarging the jurisdiction beyond the actual coast, accessory rights. It was never adopted and has never before been applied for the purpose of determining the sovereignty over coasts. What was adopted as a shield for the protection of the coast is turned into an instrument for dissevering it.

The British Counter Case (p. 28) quotes from Mr. Joshua Bates who in 1853 says: "This doctrine of the headlands is new." And yet it is sought to make it appear that the negotiators of the Treaty of 1825 must have intended to apply it, for the purpose of determining what was "coast" as that word was used by them.

FIFTH.

FIRST QUESTION. "*What is intended as the point of commencement of the line?*"

On this question there is no controversy. The United States requests the tribunal to decide that Cape Muzon is the point of commencement.^a

In the British Case occurs the following:

But Great Britain concedes that it sufficiently appears that Cape Muzon, the more southerly point, fulfills the essential conditions of the Treaty, and should be held to be the point of departure.^b

SIXTH.

SECOND QUESTION: *What channel is the Portland Channel?*

ANSWER PROPOSED BY THE UNITED STATES:

The United States requests the Tribunal to answer and decide that Portland Channel is the same body of water now commonly known and described as Portland Canal, which, passing from the north between Ramsden Point on the mainland and Pearse Island, and thence southward of said island and Wales Island, enters Dixon Entrance between the island last mentioned and Compton Island.

THE INTENTION OF THE NEGOTIATORS.

Portland Channel, as the course of the boundary, first appears in the discussion in Russia's proposal of Feb. 12 24, 1824. The line of demarcation starting from Prince of Wales Island was to "follow Portland Channel up to the mountains which border the coast."^c Russia had previously, on Oct. 2, 1823, proposed the 54° of latitude (Poletica to Nesselrode, Nov. 3, 1823).^d Sir C. Bagot had understood him to offer the 55° (Bagot to Canning, Oct. 17, 1823),^e but the question had not been seriously discussed between them because, as stated by Sir C. Bagot, "M. Poletica was not empowered to treat or, indeed to pledge his government to any precise point," and Sir Charles "abstained from entering with him as fully into the matter" as he otherwise would have done. He also assigned as an additional reason for not advancing the negotiations that, in view of the position of the United States, he did not "think it safe to venture further into the question" until he had learned the opinion of His Majesty's Government upon the pretensions advanced by the United States.

^a U. S. Case, p. 104.

^c U. S. C. App., 158.

^e U. S. C. App., 131.

^b B. C., p. 46.

^d U. S. C. App., 139.

The pretensions of the United States, as stated by Mr. Middleton to Sir C. Bagot are reported in the latter's letter to Mr. Canning, Oct. 17/29, 1823,^a to be that the United States had succeeded to all claims which Spain had to the northwest coast, and that as Russia had disclaimed all intention of interfering with Spanish claims south of 61°^b, "any claim of the coast lying between 42° and 61° ought in strictness to be made between the United States and Great Britain alone;" but that the United States was ready to acknowledge that no country had any absolute and exclusive claim to those coasts, and only intended to claim, as the heirs of the Spanish claims, that the United States had the best pretensions as between Russia, Great Britain and itself.

An argument based on this claim was advanced by Sir C. Bagot, to show that Russia had recognized the superior claim of the United States to the whole coast; but this argument reacted and was turned against Great Britain later in the negotiations, when the United States withdrew below 54° 40' in favor of Russia under their treaty.

Pending the resumption of the negotiations after the preliminary proposals of Sir C. Bagot and M. Poletica, the position of the United States had been more clearly defined and had given the territorial question "a new and complicated character."^b The Monroe doctrine had been announced and had furnished Great Britain "a conclusive reason for our not mixing ourselves in the negotiations" between Russia and the United States. The treaty of 1818, which was still in force, made it unnecessary for Great Britain to settle the boundary question at once with the United States, and an independent negotiation with Russia on the territorial question was therefore determined upon.

Such was the situation when Russia's proposal of the line through Portland Channel was first offered. Count Nesselrode, in reporting the negotiation to Count Lieven, said of this proposal that—

In order not to cut Prince of Wales Island, which, according to this arrangement, would remain to Russia, we proposed to carry the southern frontier of our domains to latitude 54° 40' and to make it abut upon the continent at Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island.^c

^aU. S. C. App., 129.

^bU. S. C. App., 144.

^cU. S. C. App., 173.

Russia assumed the position that the boundary as a matter of right should not be above the 55° , because of the lease to that point of the Russian American Company.

Sir C. Bagot took exception to the way in which this proposal was offered, in that Count Nesselrode seemed to intimate that it would be asking too much of the imperial dignity to require that pretensions advanced twenty-five years ago by the Emperor Paul should now be renounced, but he later recognized that this was an element in the situation which could not be disregarded; and finally took the responsibility upon himself of exceeding the limit of his instructions by offering to carry the line below 55° on the islands, because he felt that "His Imperial Majesty might yet possibly feel an invincible repugnance to retract from the pretensions advanced by the Emperor Paul in the charter given to the Russian American Company in 1899."^a

His instructions had been to carry the line to the southward only as far as the point opposite the southern ends of the island upon which Sitka stood, which was fixed upon the charts and was understood by Sir Charles to be about 56° , and this was the boundary proposed by him in answer to Russia's first suggestion of Portland Channel. In making this proposal he stated in objecting to the line through Portland Channel that it "would deprive His Britannic Majesty of sovereignty over all the inlets and small bays lying between latitudes 56° and $54^{\circ} 45'$."^b

This expression is quoted in the British Case (p. 56) as authority for the statement that "the British understanding, communicated to and not questioned by Russia, was that Portland Channel entered the ocean in $54^{\circ} 45'$."

A less superficial examination of the statement will disclose, however, that it does not have the significance claimed for it by Great Britain. In the first place the language is used in refusing to consent to Portland Channel as a boundary, and its exact location was therefore of no immediate importance, and the reference to its location does not carry any presumption that it is used with special care or precision on the part of Great Britain. Neither, on the other hand, was Russia called upon under the circumstances to give any opinion as to the accuracy of the reference, and her silence on the subject

^a U. S. C. App., 155.

^b U. S. C. App., 159.

raises no presumption of consent. That Count Nesselrode did not assent to $54^{\circ} 45'$ as fixing the point at which the line was to enter Portland Channel, is shown in his report of the proceedings above quoted, that "we proposed to carry the southern frontier of our domains to latitude $54^{\circ} 40'$ and to make it abut upon the continent at Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island."

This statement is contained in his letter^a to Count Lieven reporting the conclusion on that same day of the treaty with the United States, fixing the line at $54^{\circ} 40'$, so that his reference to that line, in connection with the British negotiations, has special significance.

In the second place the reference to $54^{\circ} 45'$ in Sir C. Bagot's statement was not necessarily intended to refer to the mouth of Portland Channel, and from the context it appears that an entirely different meaning is the more probable one. The reference to $54^{\circ} 45'$ is made in connection with the exclusion of British sovereignty over the inlets and small bays between that point and 56° , and one of the reasons assigned for objecting to this is that the Russian-American Company possessed no establishments on the mainland between those parallels. It will be observed, therefore, that the latitudes 56° and $54^{\circ} 45'$ are mentioned as fixing two points on the mainland between which the Russian-American Company possessed no establishments, and therefore $54^{\circ} 45'$ was necessarily not intended to be the point at which the proposed Russian line should enter Portland Channel, which was not to be at the point of the mainland, but through the channel itself.

Sir C. Bagot had distinctly so interpreted Russia's proposal in his amended proposal offered during these negotiations "in answer to the proposal made by the Russian plenipotentiaries, that the line of demarcation drawn from the southern extremity of Prince of Wales Island to the mouth of Portland Channel, thence up the middle of this channel until it touches the mainland, etc."^b

In this connection it is important to note that the Russian proposal did not fix the exact location of the proposed line by astronomical locations, but simply that it should "follow Portland Channel to the mountains," etc., so that Sir Charles Bagot's reference to $54^{\circ} 45'$ was not intended as a correction of the Russian line.

^a U. S. C. App., 172.

^b U. S. C. App., p. 159.

The reference is of no value, therefore, for the purpose for which it is cited in the British Case, and the intention of neither the British nor the Russian negotiators as to what channel is Portland Channel can be predicated upon it.

During this period of the negotiations no further progress was made toward an agreement upon the line through Portland Channel. Sir C. Bagot, as above stated, was limited by his instructions to the 56° on the outer mainland coast for the southern limit, and sought to induce Russia to accept a line there by offering to carry it down on the islands to the lowest point of Prince of Wales Island, which was understood to be about $54^{\circ} 40'$, thereby meeting the Russian requirements so far as the islands were concerned and which he hoped "while it saved this point of dignity to Russia by giving to her the fifty-fifth degree of latitude as her boundary upon the islands, might preserve also uninterrupted our access to the Pacific Ocean, and secure to His Majesty the fifty-sixth degree of north latitude as the British boundary upon the coast."^a

Russia's position throughout the negotiations was unchanged, however, and as pointed out in the observations submitted to Sir C. Bagot, was based upon the fact that the English establishments had a tendency to advance westward along the 53° and 54° and the Russian establishments to descend southward toward the 55° and beyond. Therefore it was "to the mutual advantage of the two Empires to assign just limits to this advance on both sides," before they conflicted, and "it was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers,"^b and "For these reasons the plenipotentiaries of Russia have proposed as limits upon the coast of the continent, to the south, Portland Channel, the head of which lies about (par) the fifty-sixth degree of north latitude, and to the east the chain of mountains which follows at a very short distance the sinuosities of the coast."^b

The boundary thus proposed was based on broad principles and followed natural partitions, and the question of what point on the coast $54^{\circ} 45'$ touched, which Great Britain seeks to determine by this negotiation, clearly had no place or consideration in the discussion. Certainly no distinction had been drawn between $54^{\circ} 45'$ and $54^{\circ} 40'$, because the

^a U. S. C. App., 155-6.

^b U. S. C. App., 161.

latter point had not yet been mentioned in the discussion, so far as the record shows. It is first mentioned in Count Nesselrode's report of the negotiations quoted above.

After showing these general advantages of Portland Channel as forming a natural partition fulfilling the requirements of the boundary, Russia further pointed out that on the other hand, unless the line was carried through Portland Channel, "the Russian establishments on the islands in the vicinity would have no support (*point d'appui*): that they would be at the mercy of the establishments which strangers might form upon the mainland, and that any such arrangement, far from being founded upon the principle of mutual accommodations, would but offer dangers for one of the parties and exclusive advantages for the other."^a

In Russia's final decision the British propositions were rejected on these grounds, and on the further ground "that besides, according to the testimony of the most recent maps published in England, no English establishment exists either on the coast of the continent itself or north of the 54th degree of north latitude."^b

The negotiations therefore closed at this point for lack of authority on the part of the British Ambassador to comply with the requirements of Russia below 56° on the mainland.

In the British case the observation is made on these negotiations that the fifty-fifth parallel was the limit of the Russian claim and that any suggestion of carrying the line further south to 54° 40', was but local to the Prince of Wales Island.^c

It is true that 55° was the line insisted upon by Russia but it must be remembered that this was insisted on, not as the most she claimed, but as the least she would take. She took occasion to point out and emphasize the fact during the negotiations that her claim to 55° could not be questioned, that she had at least equal rights with Great Britain below 55°, that there were no English establishments approaching the coast above 53° or 54°, and that those situated there had not yet reached the coast. There was, therefore, no question of encroaching upon British territory below 55°, which is the presumption suggested by the statement in the British Case above quoted. On the contrary, Russia regarded her attitude as a withdrawal northward from 51° rather than an extension southward from 55°. As Count Nesselrode

^a U. S. C. App., 161.

^b U. S. C. App., 165.

^c B. C., 57.

expressed it. "Thus, we wish to *keep*, and the English companies wish to *obtain*."^a

Furthermore, there was another factor in the negotiations which had a controlling influence both on Russia and Great Britain in the final determination of the location of the southern line of the *lisière*, and which in itself interprets the intention of the negotiators on that point, and that was the Russian-American treaty.

Concurrently with the British negotiations, Count Nesselrode had carried on the negotiations with Mr. Middleton, the United States Minister, and within three weeks after the suspension of the British negotiations, the treaty with the United States was concluded.

It appears from Sir C. Bagot's letter of Apr. 5 17, 1824, to Mr. Canning,^b enclosing a copy of the convention with the United States, that Mr. Canning was aware of its terms prior to sending his next instructions to Sir C. Bagot on the negotiations. Mr. Canning's next instructions, therefore, must be read in the light of this knowledge that Russia and the United States had agreed upon a line at 54° 40'. The fact that the line was not a delimitation of possessions but only of settlements does not alter its importance as a recognition by the United States of the Russian authority down to 54° 40' north latitude.

In reporting the situation to Count Lieven, with instructions to lay the matter before the British Government, Count Nesselrode, in his letter of Apr. 17, 1824, after showing that by his interpretation of the effects of the treaty of 1818 the titles of the United States to the possession of the territory of the northwest coast were as valid as those of England, says:

Nevertheless, the Cabinet of Washington has admitted that our boundary should come down as far as 54° 40'. This has been admitted in a formal agreement that we have just signed with its plenipotentiary, and the strengthening of our arguments is far from being the only result of this admission.^c

The preceding negotiations having been suspended as above shown, because Sir C. Bagot was not permitted by his instructions to carry the boundary below 56° on the mainland, Mr. Canning opened his instructions at that point and authorized Sir Charles Bagot "to take as the line of demarcation, a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel, till it strikes the mainland in latitude 56°."^d

^a U. S. C. App., 173.

^c U. S. C. App., 174.

^b B. C. App., 80.

^d U. S. C. App., 181.

These instructions were sent as stated by him, "after full consideration of the motives which are alleged by the Russian government for adhering to their last proposition."

Mr. Canning had also read Count Nesselrode's letter to Count Lieven from which the extract quoted above is taken, as appears by his letter of May 29, 1824, to Count Lieven.

In consenting to the line up Portland Channel, Mr. Canning had before him, therefore, Russia's final decision and arguments in support of it, in which Portland Channel was proposed by name and without a single reference to astronomical locations, about which no questions had arisen, it being merely described generally as offering a suitable natural partition selected on the broad grounds of the mutual convenience of both sides; the United States-Russian Treaty fixing the line at $54^{\circ} 40'$ and Count Nesselrode's statement that this admission by the United States that the Russian "boundary should come down as far as $54^{\circ} 40'$ " was regarded as strengthening their arguments. By this he meant, of course, the arguments for the same boundary at $54^{\circ} 40'$ on the mainland with Great Britain, for the boundary on the islands at that latitude had already been agreed to.

It can hardly be questioned that under such circumstances Mr. Canning's assent to the line through Portland Channel contemplated carrying the line, to its entrance at least, along the $54^{\circ} 40'$ parallel, and that there was in his mind no doubt that its entrance would be found to coincide with that parallel.

The boundary line through Portland Channel was not thereafter the subject of discussion in the negotiations; but the references to the Channel and the part that it plays in the boundary in the later negotiations settle beyond dispute the understanding of the parties that a line at $54^{\circ} 40'$ would run approximately through the center of the entrance of Portland Channel.

Sir C. Bagot in reporting the later negotiations to Mr. G. Canning, Aug. 12, 1824,^a says that one of the points of difference was the perpetual liberty of navigation and trade along the coasts of the *lisière*. The *lisière* referred to was described in the proposed conventions before the negotiators in which the line started on Prince of Wales Island at $54^{\circ} 40'$ and was then carried as follows:

the line of frontier . . . shall ascend northerly along the channel called Portland Channel, etc.

^a U. S. C. App., 190.

Sir C. Bagot therefore understood the *lisière* to be bounded on the south by Portland Channel.

Count Nesselrode, in reporting the same negotiations to Count Lieven in his letter of August 31, 1824, referring to exactly the same subject, described the *lisière* as the coast "which extends from 59° of north latitude to 54° 40'."^a Later in the same letter he refers to this same latitude of 54° 40' as that to which the United States was confined by its treaty, and again later he says, "our counter draft carries our boundary from the 51° to 54° 40'. It leaves to the establishments which the English companies may form hereafter on the northwest coast all the territory situated to the south of Portland Channel."^b In this counter draft the southern boundary of the *lisière* is carried through Portland Channel exactly as in the one referred to by Sir C. Bagot. Grouping these references together, they serve to emphasize the fact that the Portland Channel of the negotiations, which afterwards was carried into the treaty without change, was understood by Sir C. Bagot to be the same Portland Channel which was fixed by Count Nesselrode as carrying at its entrance the line 54° 40' and as the boundary to which Russia had receded from 51° in the United States treaty. It further appears that this letter of Count Nesselrode, in which this identification of Portland Channel with 54° 40' is made, was submitted to Mr. Canning and annotated by him, and so far as the references to Portland Channel are concerned, it was accepted by him without criticism or comment.

BARON TUYLL'S LETTER.

The British Case on page 56 quotes a suggestion from Baron Tuyll to Count Nesselrode, that the frontiers should be fixed at the 55th degree, "or better still at the southern point of the archipelago of the Prince of Wales and the Observatory Inlet, situated [plural] almost under this parallel."

This is relied on to show that the body of water whose mouth was opposite Prince of Wales Island was understood to be Observatory Inlet, and that consequently they could not have meant that body of water when they designated that the line should run along Portland Channel.

The argument seems to assume that Baron Tuyll meant to say that the body of water designated as Observatory Inlet was opposite the

^a U. S. C. App., 200.

^b U. S. C. App., 204.

southern point of Prince of Wales Island, and on the same latitude, and that because the southernmost point of the island is about on the same latitude as the mouth of the body of water which the United States contends was designated by the name Portland Channel in the Treaty, it follows that such body of water could not have been meant, and that the contention of the United States is thereby overthrown. The contrary inference is to be drawn from what Baron Tuxill said. He was correct in stating that the mouth of Observatory Inlet was about at the 55th parallel. Observatory Inlet was indicated on the maps of Vancouver and Arrowsmith, according to the method of lettering used by cartographers, as a minor body of water flowing into Portland Channel at Ramsdens Point. This mouth falls directly under the 55th parallel. The end of the archipelago of Prince of Wales was shown on these maps to be at about 54° 40'.

He made a clear error when he said that the point of this archipelago was almost under the 55th parallel. When the parallel, given by him as being the one at which Observatory Inlet was situated, is shown by the maps to coincide with the mouth of the body of water indicated on them as Observatory Inlet, why should we ignore his correct statement, and take his incorrect statement, as a basis for designating a body of water, which was not marked Observatory Inlet, on the maps, and which even a cursory examination of the maps would have shown to be a number of miles south of the mouth of the body which, according to the name on the map and the latitude, he had correctly located?

Therefore, his suggestion, so far from demonstrating that the Russian plenipotentiaries understood Observatory Inlet to extend to Dixon Entrance, indicates just the contrary. At most, however, the statement could only show that Baron Tuxill understood that the body of water whose mouth was nearest opposite to the southernmost point of Prince of Wales Island was Observatory Inlet. If this was his idea, it does not follow that Count Nesselrode concurred in it. If he had concurred in it and had meant that body of water, he would have called it Observatory Inlet instead of Portland Channel, for 54° 40' was the latitude along which he certainly expected the boundary to run. Russia first suggested Portland Channel, and it is not likely that he would have carried the line to a body of water further north without any pressure on the part of Great Britain (and none such appears to have been brought on this question), if Baron Tuxill had suggested Observatory Inlet as a proper body of water, and he had understood that

Observatory Inlet was that body which debouches nearly opposite the southernmost point of Prince of Wales Island. The better reasoning is that he understood that Baron Tuyll meant by Observatory Inlet the Observatory Inlet marked on the map whose mouth was under the 55th parallel, and that this body of water was not acceptable to him, first, because it was not on 54° 40', and, second, because it did not debouch on the high seas, it being desirable to have the line proceed up such a body of water.

Whatever Baron Tuyll's idea was, it is evident that his letter was not sufficient to charge Count Nesselrode with any different understanding of Portland Channel from the one consistently followed by him in the negotiations; and the date of the letter, which is October 21, 1822, and prior to the commencement of the negotiations, shows that it is of no relative importance in interpreting the later understanding of the parties.

PHYSICAL GEOGRAPHY OF PORTLAND CHANNEL.

The contention of the British Case is that "The only canal known by the name of Portland at the time of the treaty, had been surveyed, chartered, described and named by Vancouver as Portland Canal, and is so called in the first edition of his book, but changed in the second edition to Portland Channel. The variation seems immaterial."^a

This contention is based upon the statement in the British Case, p. 50, that Vancouver's Narrative was known to have been before the negotiators. In view of the fact that Vancouver's Narrative is not referred to anywhere in the negotiations by any of the negotiators, this statement calls for affirmative proof, but no evidence is offered in its support. On the contrary it appears in the negotiations as shown below that Vancouver's Narrative was not followed by the negotiators in the astronomical locations or in the geographical references, and it further appears that Vancouver's charts rather than his Narrative were the final expression of his conclusions and were so regarded by the cartographers who followed him.

In the geography of Alaska the word "canal" has a local and special meaning. It signifies not an artificial channel, but a great arm of the sea, a fjord, or estuary. "Along the coast of Southern Alaska and British Columbia, submergence has led the sea far into

^a B. C., p. 49.

the valleys of the mountainous highlands. Some of the inner longitudinal valleys, beyond the outer ranges, are now under water, forming 'canals' of great value for coastwise navigation."^a

Viewed as a whole the coast has a general trend in a northwesterly direction, but in detail it is very irregular, reaching back into deep, narrow fjords, and fringed by a mass of islands of all sizes. The fjords and straits are submerged valleys, both in line with and transverse to the general direction of the mountain ranges. Of the fjords, Dr. G. M. Dawson writes: "Their width is usually from one to three miles, their shores rocky and abrupt, and rising towards the heads of the longer fjords into mountains from 6,000 to 8,000 feet in height." As an illustration reference may be made to Lynn Canal, named and charted by Vancouver, which is a fjord, or estuary, embracing about 388 square nautical miles, and terminating in the two inlets named respectively Chilkat and Chilkoot.

When viewed from the standpoint of its geological origin and formation, the term Portland Canal should likewise be applied to the entire body of water embraced within the continental shores between Point Ramsden and the open sea, and terminating in the two inlets generally known as Portland Canal and Observatory Inlet; such entire body of water embracing about 287 square nautical miles, being dotted by many islands, the larger of which are Pearse, Wales, Somerville, Fillmore, Sitklan, Kannaghmut, Compton, Truro, and Tongass. That Vancouver regarded the entire "arm of the sea," or estuary, as above described, as Portland Canal is plainly indicated by the following: "In the forenoon we reached that *arm of the sea* whose examination had occupied our time from the 27th of the preceding to the 2nd of this month. The distance from its entrance to its source is about 70 miles, which, in honor of the noble family of Bentinck, I named Portland's Canal."^b

Here is a clear and exact statement that the "arm of the sea" named "Portland's Canal" was the body of water traversed between the 27th of July,—on the morning of which he was in Observatory Inlet, "about twelve miles to the southward of the ships" (which were then in Salmon Cove)—and the 2nd of August, in the evening of which he was in Nakat Inlet where, to use his own words "our hopes vanished

^a From Prof. Wm. M. Davis, in the *International Geography*, p. 667.

^b B. C. App., 145.

by our arriving at the head of the arm where it terminated in a small fresh water brook flowing from low marshy ground in latitude 54° 56', longitude 229° 28'." It thus appears that the journey, during which Vancouver traversed a body of water named by him Portland's Canal, began at least thirteen miles from the passage so entitled in the British Case and ended at Nakat Inlet, *at least 40 miles therefrom*.

That Vancouver regarded "Observatory Inlet" merely as a "branch" of this "arm of the sea," is made clear by the following: "Nothing of any note having occurred during my absence, I shall conclude this chapter by the insertion of the astronomical and nautical observations made at this place, and in consequence of our having been so fortunate as to be able to obtain those that were essential for correcting our former survey, and for future regulation in that respect, this *branch* obtained the name of Observatory Inlet and the cove where the vessels were stationed that of Salmon Cove, from the abundance of that kind of fish that were there taken."^a

The British Case, p. 50, correctly states that "As to the greater part of the length of the Portland Channel above shortly described, there is not, and could not be, any dispute. Reference to the charts will show that, at any rate, that portion of the westerly water which extends inland from the upper end of Pearse Island to the head of the channel marked 'Portland Canal' must be comprised in Vancouver's Portland Canal. And this is the common case of both sides. The dispute is as to the remainder of the channel." That is to say, the matter which remains in dispute is this: Is Portland Channel, below the point of agreement, that body of water which goes "seaward between Pearse, Wales, Sitklan, and Kannaghunut Islands on the east and south, and the continental shore, Fillmore and Tongass Islands on the west and north;" or is it that body of water which goes seaward "between Pearse Island and the peninsula, passes Ramsden Point, in (or at the entrance of) Observatory Inlet, and reaches the ocean by the channel between Pearse and Wales Island on the west, and the easternly continental shore, entering the ocean between Point Wales on the west and Point Maskelyne on the east."

At this stage of the argument it will be helpful to contrast, with the aid of physical geography, the relative volume of the two bodies

^a B. C. App., 146.

of water competing for the title of Portland Channel, from the point of agreement to the open sea. The channel contended for by Great Britain is in length twenty-eight nautical miles; of an average width of 0.76 of a nautical mile; and of an average depth of sixty-four fathoms. This channel is at two points narrowed to a width of about two hundred and fifty metres (about an eighth of a mile), the result of which is a choking of the waters passing through it, in its tidal action, to such an extent that about ninety per cent of the tidal flow is through the channel contended for by the United States.

The channel contended for by Great Britain, between Wales passage and Tongass passage, is foul ground, and the most ordinary prudence would forbid its navigation. The best evidence of that fact is to be drawn from Vancouver himself who tells us in his narrative that even when he was making his way to the sea by the channel in question he passed to the northward and westward of Fillmore Island instead of proceeding directly across the foul ground, thus avoiding five miles of the channel now embraced in the British contention.^a Vancouver puts it beyond all doubt that at no time, either before or after his boat exploration, did he ever venture to enter with his ships into the channel in question. Certainly he was but little impressed with either the value or importance of the smaller channel, because after he had completed his exploration of it, he said, in the evening of August 2,

This disappointment occasioned us no small degree of mortification, since we had already been absent from the ships a whole week, with the finest weather the season had yet afforded; and though our utmost exertions had been called forth in tracing the continent through this labyrinth of rocks we had not advanced more than thirteen leagues in a right line from the ships to the entrance of this inlet, and that in a southwest direction; very different from the course we could have wished to have pursued. It was also now evident that we had the exterior coast to contend with and from the length of time we had been indulged with fine weather, we could not reasonably expect its continuing much longer; indeed the appearance of the evening indicated an unfavorable alteration which made me apprehensive that probably the finest part of the season had been devoted, in our late pursuit, to a very perplexing object *of no great value or consideration.*

The channel contended for by the United States is likewise twenty-eight nautical miles in length; of an average width of 2.58 nautical miles; and of an average depth of two hundred and eighteen fathoms. The volume of water contained in that channel is therefore about eleven

^a Vancouver's Narrative, Vol. II, pp. 343-345.

and a half times as great as that contained in the channel advocated in the British contention. According to the statement of Vancouver, made when he entered the larger channel, "its entrance is not more than two miles and a half across"; and later on he says "no bottom was however gained after passing that point (speaking of Point Maskelyne), with sixty and seventy fathoms of line." It appears not only from his narrative but from the charts of Vancouver that he navigated with his ships the larger channel, up to the junction with Observatory Inlet, both in and out.

The reason is thus stated by Vancouver himself: "The route by which the vessels had advanced to Salmon Cove, being infinitely better for them to pursue towards Cape Caamano, than the *intricate channel through which I had passed in the boats*, we weighed with the intention of directing our course thus about six in the morning of Saturday the 17th; but having a strong gale from the southward, we made little progress windward."^a And yet despite the natural and cogent presumption that a trained navigator and cartographer would have given the name of the channel to the real and navigable one, in preference to an almost unnavigable one, which he described as "of no great value or consideration," the British Case assumes the burden of proving the contrary by means of the Narrative and maps of Vancouver himself.

EVIDENCE OF THE CARTOGRAPHERS.

During the progress of the negotiations specific references were made to the following maps and charts. Sir Charles Bagot in his letter of August 19 (31), 1823, to Mr. G. Canning said:

I am not, however, quite sure that I am right in this last assertion, as the Russian Settlement of Sitka, to which I am told that the Russian Government pretends to attach great importance, is not laid down very precisely in the Map published in 1802 in the Quartermaster-General's Department here, or laid down at all in that of Arrowsmith, which has been furnished to me from the Foreign Office.

Sir Charles Bagot in his letter of October 17 (29), 1823, to Mr. G. Canning, said:

I then gave him to understand that the British Government would, I thought, be satisfied to take Cross Sound, lying about the latitude of $57\frac{1}{2}^{\circ}$ as the boundary between the two Powers on the coast, and a meridian line drawn from the head

^a Vancouver's Narrative, vol. IV, p. 202.

of Lynn Canal, as it is laid down in Arrowsmith's last map, or about the one hundred and thirty-fifth degree of west longitude, as the boundary in the interior of the continent.

Mr. G. Canning in his letter of January 15, 1824, to Sir C. Bagot said:

The most southern establishment of Russia on the northwest coast of America is Sitka, which is not laid down in our latest maps with sufficient exactness, but which appears by the Russian map published in 1802 to be situated, as the inclosed copy of a letter from Mr. Pelly, chairman of the Hudson's Bay Company, also represents it, in latitude 57° , and not (as the map of which a copy was inclosed to your Excellency indicates) on the continent, but on a small island of the same name at the mouth of Norfolk Sound; the larger islands contiguous thereto, forming (what is called by Vancouver) Kinge George's Archipelago, are separated from each other by a strait called Chatham Strait, and from the mainland by another strait, called Stephen's Strait or passage.^a

Mr. Canning will perceive by the inclosed Russian Chart (copied from Vancouver's survey) that the Russian settlement of Sitka is on a small island they have so named in the mouth of Norfolk Sound and in latitude $57^{\circ} 5' N$. The great island contiguous to it is named by Vancouver "King George's Archipelago," and the strait which separates it from another island (Admiralty Island) is named "Chatham Strait."^b

In the Hudson's Bay Company's letter to Mr. G. Canning (No. 40), dated London, January 16, 1824,

Mr. Pelly presents his compliments to Mr. Secretary Canning, and, as in the conversation he had with Mr. Canning he seemed to consider Mr. Faden's map as the most authentic (an opinion which in so important a question as that of settling a natural boundary it may, perhaps, be dangerous hastily to admit), Mr. Pelly has had the posts of the Hudson's Bay Company, in that part of the territory under consideration, marked on it; he has likewise had coloured the proposed line from Lynn Canal, the northern extremity of Chatham Strait, as well as the less objectional one from Mount Elias.^c

The Faden map here referred to is undoubtedly that published in London June 1, 1823 (No. 10 of the British Atlas), about seven months before the letter in question was written. In that letter also occurs the following: "The map is sent herewith, and likewise a copy of G. H. von Langsdorff's account of his voyage to the northwest coast of America, in the fourth chapter of which is a full description of Sitcha." Langsdorff's map, illustrating his voyage, is No. 7 of the British Atlas. No other specific references

^a U. S. C. App., 144.

^b Memorandum, January 13, 1824, App. British Case, p. 59.

^c B. C., App., p. 65.



Faden's Map, 1823
(From the British Case)



American Atlas N° 4, -Reproducing
Vancouver's Map, N° 7, Atlas 1798.



Vancouver's Map, No. 14.



Arrowsmith's Map, 1822
Corrected to 1823.



Geological Corps Map, 1842 to 1882.
(From the British Case.)

are known to have been made, during the negotiations, to any other map or chart whatsoever.

The statement heretofore made that Vancouver's Narrative clearly indicates the fact that he regarded Observatory Inlet only as a "branch" of the main body of water or "arm of the sea" to which he applied the name of Portland's Canal is confirmed by his chart outlining "Part of the Coast of North America," which appears as No. 2 in the British Atlas, and as No. 4 in the American. No minute examination is necessary to perceive that the name "Portland Canal" is so printed along one entire side in large letters as to indicate that it is given to the "arm of the sea" or fiord as a whole, while the name "Observatory Inlet" is printed in smaller type along that "branch" in such a way as to preclude the idea that it was intended to apply to any water below Point Ramsden. The accompanying reproduction demonstrates the relative size of the type employed.

It thus appears that the name "Portland Canal," consisting of only thirteen letters, occupies a space just twice as long as that occupied by the name "Observatory Inlet" with sixteen letters. And to this must be added the consideration that it is a general rule with cartographers to place the name of the object designated as nearly opposite the centre of that object as possible. Applying that rule to the matter before us it appears that the names in question have been placed on that principle,—the name "Portland Canal" being placed as near as possible opposite the centre of the entire body of water, and the name "Observatory Inlet" being placed as near as possible opposite the centre of the "branch" beginning at Point Ramsden, although, according to the admission of the British Case, p. 55, "it was physically possible that they should extend southward as far as Pearse Island."

If any confusion has resulted from the statement made by Vancouver that "The west point of Observatory Inlet I distinguished by calling it Point Wales, after my much esteemed friend Mr. Wales, of Christ's Hospital," the plain answer is that such confusion was swept away when, through the plotting of his field notes, Vancouver saw clearly the relations of the several parts of his explorations to each other. It is hardly necessary to state that Vancouver's maps or charts embody the final and revised form of his work. On the map in question is the statement that it was "prepared under his immediate inspection." Map No. 1 of the British Atlas, dealing with the

same subject on a smaller scale, likewise designates the entire body of water by placing the name "Portland Canal" as nearly as possible opposite the centre in larger type, while the name "Observatory Inlet," is placed along the entire "branch" terminating at Point Ramsden, in smaller type.

Nothing on this subject can be drawn from the Russian Map of 1802, inclosed in Sir C. Bagot's No. 56, for the reason that the names in question were not reproduced. And the same may be said of Langsdorff's map of 1803-4-5 (No. 7 of the British Atlas) because the scale is so small that the inlets cannot be identified. While the scale of Walch's map, Augsburg, 1807, is also too small to be decisive one way or the other, Pinkerton's Modern Atlas, "from Mr. Arrowsmith's map" of 1818, fortifies the American contention based on the manner in which the names were originally printed. The printing of the names on Brue's map of 1815-19 indicates nothing material in favor of either party. Before commenting upon the Arrowsmith map of 1822, with additions to 1823 (No. 10 of the United States Atlas), a map known to have been before the negotiators, the fact should be emphasized that its author, "Hydrographer to His Majesty," produced, during a long period of years a series of official or semi-official maps of the highest character and authority. In the Arrowsmith map just referred to, the name "Portland Canal" is so printed as unquestionably to refer to the entire "arm of the sea" or fiord, while the name of "Observatory Inlet" is so printed as unquestionably to refer only to the "branch" ending at Point Ramsden.

The maps of Faden (Nos. 10 and 11 of the British Atlas, the first of which is known to have been before the negotiators), published by his successor James Wyld, "Geographer to His Majesty," after citing the authorities on which they are based, including Vancouver, tell the same story so far as the printing of the names is concerned. If it is to be assumed that the negotiators of the treaty of 1825 had before them every map or chart published before that time, it cannot be denied that the dominant and central fact that confronted them, on every one of importance, including those of Vancouver, was that the name "Portland Canal" was so placed and printed as unmistakably to extend its application to the entire "arm of the sea" in question, while the name "Observatory Inlet" was so placed and printed as unmistakably to limit its application to the "branch" ending at Point Ramsden.

MAPS AND CHARTS PUBLISHED SINCE 1825.

Nothing could be more emphatic than the confirmation given to the statement just made in the map (Am. Atlas No. 12), which appears to be the first British map published after the making of the treaty of 1825. That such map was intended to be an interpretation of that treaty is made certain by the following printed on its face: "Note. Wherever the summit of the mountains (which are supposed to extend in direction parallel to the coast) from the 56th degree of N. Lat. to the point of intersection of the 141st degree of W. Long. shall prove to be at the distance of more than 10 marine leagues from the Ocean, the limit between the British Possessions and the line of coast which is to belong to Russia, shall be formed by a line parallel to the windings of the coast and which shall never exceed 10 marine leagues therefrom. See Article 4th Treaty 1825."

On the face of that map, the two islands, Wales and Pearse, which are correctly located, are distinctly colored as Russian in yellow, that color being used throughout to designate the territory confirmed to Russia by the treaty; while the three islands on the east side of the canal, Somerville, Compton and Tuiro, are as distinctly colored in pink, that color being used throughout to designate the territory confirmed to Great Britain by the treaty. As evidence of the fact that the construction thus put upon the treaty of 1825 by Arrowsmith was identical with that put upon it by the French geographers, reference is made to the map of Brué, published at Paris, 1833 (Am. Atlas, No. 13), in which the dividing line between British and Russian territory is thus described: "*Limite entre les possessions Anglaises et Russes, d'après le traité de 1825.*" The line in question is a distinct dotted line, following the contention of the United States, and therefore including Wales and Pearse Islands in Russian territory.

But more conclusive still is the Admiralty chart (No. 25 of the British Atlas) entitled "Port Simpson to Nass Village," of 1868, issued by the highest geographical authority known to the British Empire—the British Admiralty. It is hard to understand why the following caveat should have been inscribed on the face of this chart: "The name Portland Canal on this sheet was inserted by the Surveyors without authority. The name Portland Inlet as applied to the southernmost part of what Vancouver called Observatory Inlet, was copied from an Admiralty Chart of 1853. By whose authority this name was applied in

drawing that chart is not known." As the chart was put forth as an official document by the British Admiralty the outside world has no right to go behind its *imprimatur* in order to inquire into the method of its construction. Suffice it to say that it emphatically upholds the American Case, affirmatively, by giving to the body of water contended for therein the names of Portland Inlet and Portland Canal; negatively, by ignoring, as unworthy even of a name or survey, the body of water contended for in the British Case.

In that respect it perfectly agrees with the Narrative of Vancouver who said, after he had finished his boat exploration of it: "that probably the finest part of the season had been devoted in our late pursuit to a very perplexing object of no great value or consideration."^a Just as Vancouver, in 1793, gave the name of Portland to the entire "arm of the sea" so in 1868 the British Admiralty gave the name of Portland to the only channel in that "arm" which was really navigable. If by any possibility the fact could be established that the names "Portland Inlet" and "Portland Canal" were introduced without authority into the Admiralty Chart of 1868, just referred to, how can the fact be explained away that these names were repeated in substantially the same form on the "British Admiralty Chart No. 2431, Cardova Bay to Cross Sound, 1865, corrections to 1884" (British Atlas No. 33)? Certainly the explanation now printed on the face of that chart does not contest the fact that it was actually issued in its present form.

That the Canadian geographers understood the matter in the same way is manifest from the map (No. 42. Atlas Am. Counter Case) published in 1881 in the "Geological and Natural History Survey of Canada; Report of Progress for 1879-80." On that map the "presumed boundary" is distinctly drawn so as to include Wales and Pearse Islands in American territory. Another confirmation coming from a Canadian source, is contained in a map (No. 31 of the British Atlas) of "British Colombia compiled and drawn by Edward Mohun, C. E. by direction of the Honorable W. Smithe, Chief Commissioner of Lands and Works, Victoria, B. C. 1884." On that map the line entitled "Approximate international boundary by convention between Great Britain and Russia, 1825," boldly and distinctly drawn, includes both Wales and Pearse Islands within American territory. On a map

^a Vol. II, p. 345.

of the Dominion of Canada, by the "Geological and Natural History Survey of Canada," 1842 to 1882, (No. 32 of the British Atlas) the names "Portland Inlet" and "Portland Chan." are printed in capital letters along the entire course of the channel contended for by the United States, while the name "Observatory Inlet" is printed in much smaller letters along the "branch" ending with Point Ramsden. On this map Wales and Pearse Islands are also so tinted as to indicate that they are American Territory.

PRESUMPTION TO BE OVERCOME BY GREAT BRITAIN THAT THE THAL-
WEG IS THE BOUNDARY.

If it be true, as heretofore contended, that the upper part of the body of water, admitted by both parties to be Portland Canal above Pearse Island, goes to the sea through two channels, is it not a violent presumption to suppose that Vancouver would have limited the name "in honor of the noble family of Bentinck" to that practically unavignable and narrow channel, to which he referred as "a very perplexing object of no great value or consideration," to the exclusion of the broad and navigable channel of which he said: "The route by which the vessels had advanced to Salmon Cove, being infinitely better for them to pursue towards Cape Caamana than the intricate channel through which I passed in the boats." Such presumption is overborne by the overwhelming testimony of the numerous maps and charts, heretofore referred to, existing prior to and after the making of the treaty of 1825.

The British Case relies mainly upon two passages from Vancouver's Narrative, as follows:

Nothing of any note having occurred during my absence, I shall conclude this chapter by the insertion of the astronomical and nautical observations made at this place, and, in consequence of our having been so fortunate as to be able to obtain those that were essential for correcting our former survey, and for our future regulation in that respect, this branch obtained the name of Observatory Inlet, and the cove, where the vessels were stationed, that of Salmon Cove, from the abundance of that kind of fish that were there taken.^a

The west point of Observatory Inlet I distinguished by calling it Point Wales, after my much-esteemed friend Mr. Wales of Christ's Hospital, to whose kind instruction in the early part of my life I am indebted for that information which has enabled me to traverse and delineate these lonely regions.^a

^a B. C. App., 146.

As has been shown, looking to the entire narrative, it is in doubt as to what waters he applied the name of Portland Canal.

There is no affirmative evidence tending to show that the negotiators of the Treaty of 1825 ever had any knowledge of Vancouver's narrative, entitled "A Voyage of Discovery to the North Pacific Ocean." Upon the contrary there is conclusive evidence of the fact that Sir Charles Bagot, who for the greater period of time carried on the British negotiations, was ignorant of it,—certainly of that part of it relating to Portland Canal.

This statement is borne out by the following. Vancouver, in rebutting the idea that Portland Canal was the outlet of an interior river system, said: "From hence it took a more northerly direction, and then trended a little to the eastward of north, where, by ten of the forenoon of the following day, it was found to terminate in low marshy land in latitude $55^{\circ} 45'$, longitude $230^{\circ} 6'$." In March, 1824, Sir Charles Bagot, in his reply "to observations of Russian plenipotentiaries," said: "The head of Portland Channel may be, as there is reason to believe, the mouth of some river flowing through the midst of the country occupied by the Hudson's Bay Company, and it is, consequently, of great importance to Great Britain to possess the sovereignty of the two shores thereof."^a Furthermore it should be noted that throughout the correspondence between the negotiators the astronomical locations are given in longitude west of Greenwich, while in the narrative of Vancouver the longitude given is east. On all the English maps referred to in the negotiations the longitude appears as west of Greenwich.

Is it to be presumed that the negotiators generally were better informed as to Vancouver's narrative than the experienced representative of Great Britain who, for some years, had been charged with her interests at St. Petersburg, and who contradicted Vancouver in a vital particular. That the Russian negotiators were either ignorant of, or in conflict with the narrative as to the latitude of the termination of Portland Canal, which Vancouver had determined to be "in latitude $55^{\circ} 45'$," is established by the British Case (p. 20) where the following averment is made: "In their reply to Sir Charles Bagot's amended proposal, the Russian Plenipotentiaries re-stated their reasons for proposing as the boundary on the coast of the continent to the south ('sur la côte du continent au sud') the Portland Canal, the

^a U. S. C., App., p. 163.

origin of which inland (*'dans les terres'*) they said was at the 56th degree of north latitude, and to the east the chain of mountains which followed at a very little distance the sinuosities." The divergence between the two statements is fifteen nautical miles.

In the second place, admitting for the sake of the argument, despite the affirmative evidence to the contrary, that the negotiators, or some of them, were familiar with Vancouver's narrative, they must have known that it could only be considered in connection with his charts which were the final, adjusted and authoritative statements of his explorations. When the entire body of evidence accessible to the negotiators is taken together,—that is to say the narrative and charts of Vancouver and the maps and charts of all the other cartographers published before 1825,—can it be held that the foregoing passages from the narrative, should be held to maintain a conclusion so improbable, looking to the character of the two channels. If any doubt could remain in the mind as to the intention of the negotiators, certainly that doubt must be removed by the consensus of the cartographers who have spoken since 1825 to the effect that Portland Channel is really that one described in the American contention.

In reference to the map of Greenhow referred to in the British Case, p. 59, where the statement is made that "he shows the water boundary running to the north of the islands, in accordance with the British contention," suffice it to say that while the line drawn by him appears to run in that way, yet by reason of his very defective cartography the mind remains in complete doubt as to the identity of the three islands, north of which his line is run! In answer to the further statement made at this point in the British Case, "that "it is believed that no map has been found showing any contrary indication till a comparatively late date," reference is made to the Arrowsmith map of 1833 (No. 12, American Atlas) in which this famous "Hydrographer to His Majesty," within eight years after the treaty was made, distinctly colored Wales and Pearce Islands as Russian territory, and to maps 14, 20 and 24 of the U. S. Atlas.

THE THALWEG AS THE BOUNDARY OF CONTERMINOUS STATES.

If the maps and narrative of Vancouver shall both be looked to, and if, on the whole evidence, there shall be a doubt as to what the negotiators meant, then the result should be controlled by the rule of inter-

national law which declares, that, if there be more than one channel in a body of water dividing conterminous states, the deepest channel is the mid-channel or thalweg for the purposes of territorial demarcation. According to Grotius: "A river that separates two empires is not to be considered barely as water, but as water confined within such and such banks and running in such and such channel."^a According to Vattel: "If, of two nations inhabiting the opposite banks of the river, neither party can prove that they themselves, or those whose rights they inherit, were the first settlers in those tracts, it is to be supposed that both nations came there at the same time, since neither of them can give any reason for claiming the preference; and in this case the dominion of each will extend to the middle of the river."^b

Sir Travers Twiss has well said that "Grotius and Vattel speak of the *middle of the river* as the line of demarcation between two jurisdictions, but modern publicists and statesmen prefer the more accurate and more equitable boundary of the *midchannel*. If there be more than one channel of a river, the deepest channel is the midchannel for the purposes of territorial demarcation; and the boundary line will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed. Thus we find in the Treaty of Angovie (17 Sept. 1808) concluded between the Grand Duchy of Baden and the Helvetic Canton of Angovie, that the *thalweg*, or water frontier line, is defined to be 'the line drawn along the greatest depth of the stream,' and as far as bridges are concerned, 'the line across the middle of each bridge.' The islands on either side of the midchannel are regarded as appendages to either bank; and if they have once been taken possession of by the nation to whose bank they are appendant, a change in the midchannel of the river will not operate to deprive that nation of its possession, although the water frontier line will follow the changes of the midchannel."^c See also Bluntschli, Sec. 298, Lardy's trans.; Rivier, vol. 1, pp. 142, 168. Hall says that where the boundary "follows a river, and it is not proved that either of the riparian states possess a good title to the whole bed, their territories are separated by a line running down the middle, except where the stream is navigable, in which case the centre of the deepest channel, or, as it is usually

^a *De Jure Belli ac Pacis*, 11, c. 3, Sec. 17.

^b *Droit des Gens*, Bk. 1. c., XXII, Sec. 26.

^c *The Law of Nations*, 1 pp. 207-8.

called, the Thalweg is taken as boundary."^a The rule is not limited however to cases in which rivers are boundaries between conterminous states: it extends as well to the thalweg of "a strait, sound, or arm of the sea." That view is thus stated in Field's International Code, p. 16: "*Boundary by a stream or channel*, 30. The limits of national territory, bounded by a river or other stream, or by a strait, sound, or arm of the sea, the other shore of which is the territory of another nation, extend outward to a point equidistant from the territory of the nation occupying the opposite shore; or if there be a stream or navigable channel, to the thread of the stream, that is to say, to the midchannel; or, if there be several channels, to the middle of the principal one." To the same effect is Halleck, who says: "But where the river not only separates the conterminous states, but also their territorial jurisdictions, the Thalweg, or middle channel, forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea.

"As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object. The division of the islands in the river and its bays would follow the same rule."^b

In this case it is proven that the channel contended for by the United States is the deepest, broadest and by far the most important because it is in fact the only really navigable and safe one.^c Vancouver, if his narrative shall be regarded as admissible evidence, put that fact at rest by describing the narrow, rocky and really unnavigable channel contended for by Great Britain as an "object of no great value or consideration." In describing his boat exploration to the sea, partly through this channel, he says, "and though our utmost exertions had been called forth in tracing the continent *through this labyrinth*

^a Int. Law, p. 127.

^b Int. Law (Baker ed.), vol. 1, p. 171, citing Gründling, *Jus Nat.*, p. 248; Wolfius, *Jus Gentium*, Secs. 106-109; Stypmannus, *Jus Marit.*, etc., cap. V, N. 476-552; Merlin, *Répertoire*, voc. 'alluvium'; Rayneval, *Droit de la Nature*, tom. I, p. 307; De Cussy, *Droit Maritime*, liv. I, tit. II, Sec. 57.

^c U. S. C. C. App., 237-238.

of rocks we had not advanced more than thirteen leagues in a right line from the ships to the entrance of this inlet." He never dared to traverse that part of it, heretofore designated as the "foul ground," even in open boats.

At no time, either before or after his boat excursion, did he ever venture to enter the smaller channel with his ships. His charts fix the fact that he navigated with his ships the larger channel, into the junction with Observatory Inlet, both in and out. The reason he gives in his narrative for this preference is that "The route by which the vessels had advanced to Salmon Cove, being infinitely better for them to pursue towards Cape Caamano, than the intricate channel through which I had passed in the boats." As hitherto pointed out, the smaller channel, is of an average depth of sixty-four fathoms, and of an average width of only three quarters of a nautical mile, at two points, narrowed to a width of about an eighth of a mile, while the greater channel, of an average depth of two hundred & eighteen fathoms is of an average width of 2.58 nautical miles. As stated heretofore the volume of water contained in the larger channel is about eleven and a half times as great as that contained in the smaller; while the narrowness of the smaller produces a choking of the waters passing through it, in its tidal action, to such an extent that about ninety per cent of the tidal flow is through the channel contended for by the United States.

Is it, therefore, a matter of wonder that the British Admiralty chart of 1868 should have entirely ignored the smaller channel as unworthy even of a name or survey, while the larger was carefully designated as "Portland Inlet." There is no question here of weighing evidence in order to determine which one of two channels running through "an arm of the sea" is the deepest, widest and most navigable. The proof does not leave any room for doubt. It is simply a question of substituting for the general rule of international law, designating such thalweg as the boundary *a special and conventional rule* declaring a smaller, narrower and "shallower" "labyrinth of rocks" as the boundary. The only possible way in which Great Britain could work out that result would be to establish affirmatively that such was the special contract and agreement entered into with Russia in the treaty of 1825, the effect of which would be the suspension of the general rule of international law declaring the deepest and most navigable channel the

midchannel, and the substitution in its place of a special and conventional rule declaring the contrary. See Grotius, *De Jure Belli ac Pacis*, lib. II, c. III; Bluntschli XV, 2; Martens, *Précis*, § 119, p. 320; Bluntschli, *Völkerrecht*, § 402. Lardy's trans.; Calvo, *Droit Int.*, 1, § 19, p. 109; Phillimore, *Int. Law*, 1, pp. 44-45 (2d ed., London); Twiss, *Law of Nations*, 1, pp. 130-131; Lawrence's *Wheat.*, p. 28; Halleck, *Int. Law*, 1 (Baker ed.), p. 50; Lorimer, *Ins. of Int. Law*, 1, p. 43.

Reference in this connection is made to the rule of construction No. 6 set forth above, which provides that it is not to be presumed without very strong reasons that one of the contracting parties intended to favor the other to his own prejudice. It is not to be presumed, therefore, that the Russian Government intended to abandon the use of the only channel leading to its possessions along the southern boundary of the *lisière*, which it knew to be navigable and safe, and to confine itself to the use of a channel which was not of sufficient importance to be clearly shown on some of the charts and on others was shown to be so broken and tortuous that its dangerous and undesirable character both for navigation and as a boundary is evident at a glance.

SOUTHERN LINE OF RUSSIA AS DEFINED IN TREATY OF 1824 BETWEEN RUSSIA AND THE UNITED STATES.

It was claimed by the United States that the territorial claims of Great Britain and the United States were coextensive and concurrent on the northwest coast of North America. The idea that the United States had "no territorial pretensions so high as the fifty-first degree of north latitude and no territorial interest in the demarcation of the boundary between His Majesty and the Emperor of Russia to the north of that degree" was dissipated by the note of Sir C. Bagot to Mr. Canning of October 17-29, 1823, in which he said:

Although Mr. Middleton has not communicated to me the instructions which he had received, I have collected from him, with certainty what I have long had reason to suspect, that the United States, so far from admitting that they have no territorial pretensions so high as the fifty-first degree of north latitude and no territorial interest in the demarcation of boundary between His Majesty and the Emperor of Russia to the north of that degree, are fully prepared to assert that they have at least an equal pretension with those powers to the whole coast as high as the sixty-first degree, and an absolute right to be parties to any subdivision of it which may now be made. Unless I greatly misconceive the argument of Mr. Middleton, it is

contended by the American Government that, in virtue of the Treaty of Washington, by which the Floridas were ceded by Spain to the United States, the latter are become possessed of all claims, whatever they might be, which Spain had to the northwest coasts of America, north to the forty-second degree of north latitude, and that when Great Britain, in the year 1790, disputed the exclusive right of Spain to this coast, the court of Russia (as, indeed, appears by the declaration of Count Florida Blanca, and as it would, perhaps, yet more clearly appear by reference to the archives of the foreign department here) disclaimed all intention of interfering with the pretensions of Spain, and, consequently, all pretensions to territory south of the sixty-first degree, and that, therefore, any division of the coast lying between the forty-second and sixty-first degrees ought in strictness to be made between the United States and Great Britain alone. ^a

When during the negotiations of 1824 Mr. Middleton was notified that Great Britain would treat separately, he at once notified the Russian Minister of Foreign Affairs and Sir Charles Bagot that if any attempt was made to negotiate upon the territorial question without the participation of the United States, it would be his duty to protest in the strongest terms. He stated to the British Minister that, as Great Britain had "no settlement or possession upon any part of the north-west *coast* of America," she had no "claims" to convey except such as she derived from the Nootka Sound convention with Spain, signed October 28, 1790; that the United States had succeeded to all the Spanish rights by the treaty of February 22, 1819, which gave the latter concurrent claims with Great Britain whatever her pretensions might be; and that for these reasons any treaty between Great Britain and Russia in which the United States was not a party would be nugatory as to it and could not divest it of the right to enjoy the coast.

After having made a like declaration to Count Nesselrode, Mr. Middleton secured an interview with him on February 23, 1824, at which he submitted a brief paper entitled, "State of the Question," in which the territorial claims of the United States were thus formally defined:

The United States, by their discovery of the mouth of the Columbia river and by their subsequent *real occupation* and continued possession of a district on the same part of the Northwest Coast of America, have perfected their right of sovereignty to that territory.

By the third article of a convention with Great Britain, concluded October 20, 1818, they stipulated "that any country that might be claimed by either party on the Northwest Coast of America westward of the Stony mountains should, together with its harbors, bays and creeks, and the navigation of all rivers within the same,

^a U. S. C., App., pp. 129-130.

be free and open, for the term of ten years from that date, to all vessels, citizens, and subjects, of the two powers, without prejudice to the claims of either party or of any other State."

By a convention with Spain of February 20, 1819, the United States acquired all the rights, claims, and pretensions, of that power to all the Northwest Coast lying north of the 42d parallel of latitude. The claims of Spain appear to have rested on *prior discovery*, as far as the fifty-ninth degree north. So far, then, as prior discovery can constitute a foundation of right, the Northwest Coast as far as the 59th degree north belongs to the United States by the transfer of the rights of Spain.

Great Britain has no establishment or possession on any part of the Northwest Coast. She has, therefore, no right, claim, or pretension to any portion thereof, except such as may result from the convention with Spain concluded October 28, 1790. It is, then, evident that her claim is concurrent with those of the United States, and can only reach to whatever point these last may be considered to extend.

It appears, then, that Russia and England can not make a definite arrangement without the participation of the United States, or at least going to their exclusion. Any agreement which these two powers may make will be binding upon themselves, but can not effect the rights of a third power.^a

The outcome of the separate negotiation between Russia and the United States was the treaty signed 5 17 April, 1824, which provided (Article III) that "It is moreover agreed that, hereafter, there shall not be formed by the citizens of the United States, or under the authority of the said States, any establishment upon the Northwest coast of America, nor in any of the islands adjacent, to the north of *fifty-four degrees and forty minutes* of north latitude; and that, in the same manner, there shall be none formed by Russian subjects, or under the authority of Russia, south of the same parallel."

The outcome of the separate negotiation between Russia and Great Britain was the Treaty signed February 16 28, 1825, which provided in Art. III. that the line should commence at the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of *54 degrees 40 minutes*, north latitude. It thus appears that in the respective treaties the parallel of 54° 40' was the common line of demarcation separating the jurisdiction of Russia on the south from that of Great Britain and the United States. In a note written on the very day the treaty between Russia and the United States was signed, April 5 17, 1824, Count Nesselrode wrote to Count Lieven, concerning the southern line to be settled with Great Britain as follows:

In order not to cut Prince of Wales island, which, according to this arrangement, would remain to Russia, we proposed to carry the southern frontier of our domains

^a U. S. C., App., pp. 81-82.

to latitude $54^{\circ} 40'$ and to make it abut upon the continent at the Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island, and which has its origin inland between 55° and 56° of latitude. * * * If Prince of Wales Island remains to us, it is necessary that it can be of some utility to us. Now, according to the plan of the British ambassador, it would be for us only a burden, and perhaps an inconvenient one. That island, in fact, and the establishments which we might set up thereon, would find themselves entirely isolated, deprived of all support, surrounded by the domains of Great Britain, and at the mercy of the English establishments of the coast. We would exhaust ourselves in the cost of guarding and watching our part without any compensation to alleviate the burden. Would such an arrangement be founded on the principle of mutual expediency?

We have all the more right to appeal to this principle, since England herself has proved by an authentic act that she regarded her rights to the territory, the surrender of which she demands, as doubtful. The convention of October 20, 1818, between the Court of London and the United States, declares that all the extent of country between the Rocky Mountains, the Pacific Ocean, and the Russian possessions shall be the common property of the two powers for ten years. The titles of the United States to the possession of this territory are, therefore, as valid as those of England. Nevertheless, the Cabinet of Washington has admitted that our boundary should come down as far as $54^{\circ} 40'$. This has been admitted in a formal agreement that we have just signed with its plenipotentiary, and the strengthening of our arguments is far from being the only result of this admission; it has other consequences to which we rightly attach the greatest importance.^a

On August 31, 1824, Count Nesselrode, in writing to Count Lieven to the effect that there were three of the then pending proposals of Great Britain which it was impossible to accept, said: "I reserve to myself the duty of making, in this dispatch, the most important observations, those concerning clauses which it is utterly impossible for us to accept. They are three in number: 1. Liberty to English subjects to hunt, to fish, and to trade with the natives of the country, perpetually, on the whole of that part of the coast which constitutes the subject of the discussion, and which extends from 59° of north latitude to $54^{\circ} 40'$."^b It thus appears that no matter whether Count Nesselrode was negotiating with the United States or Great Britain his one idea was that Russia's southern boundary, on the coast, as to each, was to be $54^{\circ} 40'$.

There is therefore no warrant for the following statement in the British Case (p. 56): "This shows that the British understanding, communicated to and not questioned by Russia, was that Portland

^a U. S. C., App., pp. 173-174.

^b U. S. C., App., p. 201.

Channel entered the ocean in $54^{\circ} 45'$. It should be remembered that that statement, based on Sir C. Bagot's proposal of "February-March, 1824," was followed by the two communications quoted above from Count Nesselrode to Count Lieven, dated respectively April 5 17, 1824, and August 31, 1824, in both of which Russia, combating the British suggestion, insisted upon the line of $54^{\circ} 40'$. Notably in the first communication above quoted Count Nesselrode said:

We proposed to carry the southern frontier of our dominions to latitude $54^{\circ} 40'$ and to make it abut upon the continent at the Portland Canal, of which the opening into the ocean is at the same latitude as Prince of Wales Island.

It is hardly necessary to add that the phrase "the same latitude as Prince of Wales Island" necessarily referred to the southern part of that island. If that be true, Russia's southern line could only enter Portland Channel at the point contended for by the United States. In the light of the foregoing does it not violate all human probability to assume that Russia intended to fix her southern boundary at one point, as to the United States, and at another point, as to Great Britain, leaving between the two a wedge-shaped expanse of water forming a triangle with a base of less than six miles and a height of about seventy?

IDENTITY OF PORTLAND CHANNEL AS UNDERSTOOD BY THE PARTIES AFTER THE TREATY.

The lease of the *Lisière* to the Hudson's Bay Company recited that it included the "Coast, exclusive of the Islands, and the Interior Country belonging to His Majesty the Emperor of Russia, situated between Cape Spencer forming the North West Headland of the entrance of Cross Sound and Latitude $54^{\circ} 40'$ or thereabouts, say the whole mainland coast and Interior country belonging to Russia" etc.^a

It is to be noted that the words "or thereabouts" used to qualify $54^{\circ} 40'$ as the location of the southern extremity of the territory leased, do not signify any doubt as to the location of the boundary line at that parallel, but on the contrary show that it was well understood that the leased territory was not to extend fully to the boundary at that point. The lease was limited expressly to the mainland coast and all the islands were in terms excluded.

^a B. C. App., 150.

An examination of the maps will show that the mainland coast was some distance above $54^{\circ} 40'$ at that point, and that in the intervening space were Wales Island, Pearse Island and several other smaller islands. The significance of the expression " $54^{\circ} 40'$ or thereabouts" as the southern limit of the lease therefore, is that it was recognized that if the description was carried to the boundary at $54^{\circ} 40'$ without qualification it would extend beyond the mainland and include these islands which would have conflicted with the other provisions of the lease. The only escape from this conclusion would be in the assumption that the lease was not prepared with care and precision. The character of the lease forbids such an assumption, however, and it appears upon the record that the reverse is true. Mr. Simpson, who negotiated the lease with Baron Wrangell, in writing to him in preparation for it says that it had been understood that the islands would be included within the leased area but on the understanding that they were to be excluded he continues:

But such being the new state of affairs, it is necessary to enter into the minutest considerations and details . . . in order to guarantee that we shall be protected from all direct or indirect rivalry in trading in the leased territory.^a

The fact that care was taken to describe the southern end of the leased territory so that it would not extend to the line of the boundary on the water at the entrance of Portland Channel, therefore indicates that it was done in order that there should be no question of its extending beyond the mainland and including the islands lying between the mainland and the boundary at $54^{\circ} 40'$. This was a mutual recognition that such islands above $54^{\circ} 40'$ belonged to Russia and consequently that the Portland Channel of the treaty was not limited to the channel wholly separated from $54^{\circ} 40'$ and lying between the islands and the mainland.

The translation of the lease as given in the United States Counter Case Appendix, p. 6, differs from the translation in the British Case Appendix at p. 150, and omits the words "or thereabouts," in connection with the reference to $54^{\circ} 40'$. It is immaterial, however, which translation is relied upon, for in either case the proof is complete on the point that there was a mutual recognition that the islands above $54^{\circ} 40'$ belonged to Russia, and consequently that the Portland Channel of the boundary was not above such islands.

^a U. S. C. C. App., 4.

Throughout the proceedings leading up to this lease and in subsequent references to it, the understanding on both sides is uniformly shown to have been that the boundary extended to $54^{\circ} 40'$ and that the Portland Channel of the boundary was the channel, through the entrance of which that parallel is found. The following extracts leave no doubt on that point:

Our Company believes that * * * it would be advisable to cede to the Hudson's Bay Company the exclusive right of trade on the shore of the continent between latitude $54^{\circ} 40'$ and the Cross Strait.^a [Report of Count Nesselrode.]

In the letter of the Directors of the Russian-American Company to the Minister of Foreign Affairs, January 25, 1859, the lease is referred to as "of a part of our possessions on the North West coast of America, a strip of land extending in a North Westerly direction from latitude $54^{\circ} 40'$ north, etc."^b

In the memorandum submitted by the Russian Minister of Finance to the Vice Chancellor in his letter of March 16, 1867, he says of the lease that it related to "that part of the mainland belonging to Russia which lies between Cape Spencer and $54^{\circ} 40'$ northern latitude" etc.^c

He also says that the United States Minister on behalf of certain merchants in California has offered to lease exactly the same territory leased to the Hudson's Bay Company, together with the islands, and this territory he describes as running part of the way "southward along the above mentioned boundary (the boundary between Russian and English possessions) to latitude $54^{\circ} 40'$ " etc.^c

In the testimony of Sir George Simpson before the Committee of the House of Commons, 1857, he says:

There is a margin of coast marked yellow in the map from $54^{\circ} 40'$ up to Cross Sound, which we have rented from the Russian-American Company for a term of years.^d

Sir George Simpson also says in his Narrative of his Journey Round the World, 1841-2, speaking of the lease:

Russia, as the reader is, of course, aware, possesses on the mainland, between lat. $54^{\circ} 40'$ and lat. 60° , a strip, etc.^e

^a U. S. C. C. App., 3.

^d U. S. C. C. App., 38.

^b U. S. C. C. App., 21.

^e U. S. C. App., 318.

^c U. S. C. C. App 34.

Russia was fully informed of the terms of this lease and sanctioned it, as appears from the recital in Art. I of the lease, and also from the reports of the Russian officials printed in the record. There can be no doubt, therefore, as to the Russian understanding that the southern boundary of her possessions on the coast extended to $54^{\circ} 40'$ and her intention to express that understanding in this lease.

It is equally clear that the attention of the British Government was directed to the making of the lease and to its terms. The lease was the direct outcome of the Dryad claim, for the settlement of which the British Government was vigorously pressing, and it is not to be presumed that the settlement, through the medium of this lease, was agreed to without a full understanding and approval of the circumstances on the part of Great Britain. Furthermore, the Hudson's Bay Company had full knowledge of how the lease was understood by Russia and the testimony of Sir G. Simpson, the Governor of that company, quoted above is itself sufficient to show that that company acquiesced in such understanding and that knowledge of the lease, and its bearing on the question of the boundary at $54^{\circ} 40'$ was brought home to the British Government. Further evidence of official knowledge of this lease on the part of Great Britain is furnished by the neutrality agreement with Russia, which was made expressly because of the existence of this lease.

In view of these considerations, therefore, even if Great Britain should plead official ignorance of the lease prior to the definite information brought home to her as shown above, there certainly can be no doubt as to her notice at that time, and her acquiescence in the lease and her action with respect to it impute to her full knowledge of all that it involved.

Reference is also made to the numerous other specific instances referred to elsewhere in the argument and in the United States Case and Counter Case in connection with the lease of the *lisière* which show that this mutual understanding as to the coincidence of $54^{\circ} 40'$ and the Portland Channel of the treaty received general acceptance and confirmation in the maps and the public and private writings emanating from British sources.

TONGASS ISLAND STATION.

On page 8 of the British Counter Case stress is laid on the location in 1835 by the Russian-American Company of a station on Tongass

Island, which lies north and west of the entrance to what is denominated in the United States Case "Pearse Canal," and in the British Case "Portland Canal." It is claimed that inasmuch as the direction was to locate a station "on the frontiers of our straits," the fact that the location was made on Tongass Island proves that it was regarded by the Russian-American Company as being the extreme frontier of Russian territory. This is an over strained conclusion. The instructions said:

As we may say that the only place in our straits, visited by the foreigners is Tongass, you must select this bay as the place of your sojourn.

The selection was not made with any object of fixing a boundary point. It was only chosen as a convenient station near the frontier for protecting the trade with the natives. It appeared as stated that it was the only place visited by the foreigners. As the object was to police the frontier against foreigners and not to fix an extreme boundary point, that point was chosen to which foreigners resorted rather than a point nearest the water up which the boundary line passed to which foreigners had not resorted. The instructions which are only partially quoted in the British Counter Case, go on to say that the most important influx of furs is at Tongass. That was a sufficient reason for establishing the station there.^a

ALLEGED ADMISSION IN THE UNITED STATES CASE.

In the British Counter Case (p. 7) a passage is quoted from the Case of the United States as follows:

The condition of the territorial controversy "Had shrunk to a dispute over the possession of an irregularly shaped portion of the continent bounded on the east by Pearse and Portland Canals and a presumptive chain of mountains, on the north by a line extending from a point on the coast, about latitude $56^{\circ} 30'$, to the mountain range, and on the west by the indented continental shore line, together with the islands lying between Clarence Strait and the mainland from $54^{\circ} 40'$ to $56^{\circ} 30'$ and thus situated north and west of Portland Canal and between it and the continent.

The British Counter Case proceeds:

It will be noticed that the eastern boundary of the section described is given as "Pearse and Portland Canals". But "Pearse Canal", which is the name subsequently given by the United States to the lower part of Vancouver's Portland Canal, and "Portland Canal", which name was later limited by the United States

^aU. S. C. App., 233-234.

to the upper part of Vancouver's Portland Canal, make together the "Portland Canal" of Vancouver as claimed by Britain.

And there is thus here an express admission that, at this stage of the negotiation, it was that canal, and no other, which the Parties meant by Portland Canal.

This is based on a misunderstanding of the passage quoted. The effect of the words "together with the islands lying between Clarence Strait" etc. is overlooked. They are intended to be taken with the words, "an irregularly shaped portion of the continent" etc. It was meant to say that it had shrunk to a dispute over the portion of continent, within the bounds designated, together with the islands described. This is plain from the concluding words which say, that they (meaning the islands) are situated north and west of Portland Canal and between it and the continent. No such admission as that stated was made by the United States.

It is submitted on behalf of the United States therefore that the Portland Channel of the treaty, when tested by the intention of the negotiators, by the language of the treaty, and by the understanding of the parties as shown by their subsequent actions is clearly identified with that body of water commonly known as Portland Channel in accordance with the answer proposed by the United States in answer to the second question.

SEVENTH.

THIRD QUESTION. "*What course should the line take from the point of commencement to the entrance of Portland Channel?*"

ANSWER PROPOSED BY THE UNITED STATES:

The United States requests the Tribunal to answer and decide that the line from Cape Muzon should be drawn in an easterly direction until it intersects the center of Portland Channel at its opening into Dixon Entrance.^a

The British Case says:

The question rightly assumes that the course of the line must be from the point of commencement to the entrance of Portland Channel.^b

The view of the United States can be more definitely stated by saying that the line should be drawn along the parallel of latitude

^aU. S. C., 104.

^bB. C., 64.

54° 40', through Dixon Entrance until it intersects the center of Portland Channel, at its opening into Dixon Entrance. Fixing the latitude of 54° 40' as the boundary was a dominant idea in the negotiations. The boundary was to be carried below 54° 40' on Prince of Wales Island, only for the purpose of giving all of that island to Russia, and it would be in harmony with the plain intent which the parties had in view by this departure, to accomplish this particular purpose, and then carry out the general intent of the Treaty, by running the line along the parallel 54° 40'.

The language of the treaty is:

A partir du Point le plus méridional de l'Ile dite Prince of Wales, lequel Point se trouve sous la parallèle du 54me degré 40 minutes de latitude Nord, et entre le 131me et 133me degré de longitude Ouest (Méridien de Greenwich), la dite ligne remontera au Nord le long de la passe dite Portland Channel."

It further provides:

Que l'Ile dite Prince of Wales appartiendra toute entière à la Russie.^b

This would seem to indicate that in the description the parallel was regarded as the real point of departure, and so to guard against the result that, Prince of Wales Island might be divided, the express provision was inserted so that, notwithstanding the designation of the parallel, the whole of the island should belong to Russia. This shows the significance given by them to the parallel and the necessity they felt for adding the special provision to guard against the possible effects of running the line from the commencement along that parallel. This view is reinforced when taken in connection with the discussion of the question as to what channel was meant by Portland Channel, in which it was endeavored to show that the parallel 54° 40', as it was considered and treated by the negotiators, is demonstrative of what they meant by Portland Channel.

Different lines are proposed by the United States and by Great Britain, but the difference arises out of the controversy as to what constitutes the entrance to Portland Channel.

If the Tribunal shall agree upon an answer to the second question, then from the positions assumed by both parties in respect to the third question, the answer to that question involves no difficulty. If it be decided that Portland Channel is the body of water which enters Dixon Entrance between Wales Island and Compton

^aU. S. C. App., 3.

^bU. S. C. App., 4.

Island, as is contended for in the United States Case,^a then the line should be drawn from the southernmost point of Cape Muzon to the parallel 54° 40', and along this parallel to the channel, until it strikes its center.

The line does not, as Great Britain claims, go north from the beginning, except so far as may be necessary to gain the latitude of 54° 40', if it shall be determined from all that appears that it was the intention that it should proceed along that parallel. In this event it will go north from the southernmost point of Prince of Wales Island only in obedience to this controlling intent and on account of the relative positions of the end of the island and the parallel, and not on account of the words "au Nord" in the text. They apply only to the direction of the line as it proceeds up Portland Channel to the 56°. This is not only the fair grammatical construction, but it is demonstrated by the physical situation. The mouth of neither of the channels claimed by the contestants to be Portland Channel is so located in respect to the southernmost point of Prince of Wales Island as to make it at all probable that the negotiators would have described a line connecting them as proceeding "au Nord." Both mouths are almost due east from the southernmost point of the island.

EIGHTH.

FOURTH QUESTION. *"To what point of the fifty-sixth parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?"*

ANSWER PROPOSED BY THE UNITED STATES:

The United States requests the Tribunal to answer and decide that the line should be drawn from the head of Portland Channel northeasterly along the same course on which said line touches the mainland at the head of Portland Channel until it intersects the 56th parallel of north latitude.^b

The language of the Treaty between Great Britain and Russia of February 16-28, 1825, has been given on page 3.

It is questioned in the British Case whether "elle" in the words "où elle atteint le 56me degré de latitude Nord," refers to the line, the channel, or the main land.^c

^a U. S. C., 104.

^b U. S. C., 104.

^c B. C., pp. 68-69.

The subject of the discourse is "la ligne," and unquestionably "elle" grammatically refers to it.

The provision is that "de ce dernier point," the line shall follow the crest of the mountains. It was a physical impossibility for Portland Channel to reach the crest of the mountains.

The negotiations show very clearly that it was the line that was to proceed along Portland Canal, and that it was the line that was to reach the 56th degree north latitude. In the amended proposal made by Sir Charles Bagot, he says:

As it has been agreed to recognize as basis of negotiation the mutual conveniences of both countries, it is to be noted, in answer to the proposal offered by the Russian Plenipotentiaries, that a dividing line, starting from the southernmost extremity of the Prince of Wales' Island and extending to the mouth of the Portland Channel, thence, by the middle of this channel until it reaches the mainland, thence to the mountains bordering the coast, etc.^a

He makes it plain that the line was to continue from the point where the channel reached the mainland to the mountains bordering the coast.

The language used by Mr. G. Canning in the draft convention prepared by him has in the second article the following:

Along the channel called Portland Channel, till it strikes the coast of the continent lying in the 56th degree of north latitude. From this point it shall be carried along that coast, etc.^b

That is to say, the line from the point where it strikes this degree shall be carried along the summit of the mountains.

In Article three of the contre-projet, submitted by Stratford Canning, it is provided, that:

The said line shall ascend to the north (Prince of Wales Island belonging entirely to Russia) along the passage called Portland Channel until it touches the coast of the mainland at the fifty-sixth degree of north latitude. From the point at which the line of demarcation touches the fifty-sixth degree, it shall follow, etc.^c

The draft in French submitted by Stratford Canning, Art. 3, contained this language:

La dite ligne remontera au Nord (l'Isle Prince of Wales appartenant en entier à la Russie) le long de la Passe dite *Portland Channel*, jusqu'à ce qu'elle touche à la Côte de terre ferme au 56me degré de Latitude Nord, depuis ce point-ci, où la ligne de démarcation touche au 56me degré, elle suivra la crête, etc.^d

^a B. C. App., 70; U. S. C. App., 159.

^c U. S. C. App., 216.

^b U. S. C. App., 183; B. C. App., 87.

^d U. S. C. App., 213.

This language was altered by Matusevich to read as follows:

La dite ligne remontra au Nord le long de la Passe, dite *Portland Channel*, jusqu'à l'endroit où cette passe se termine dans l'intérieur de la terre ferme au 56me degré de Latitude Nord—depuis ce dernier point la ligne de démarcation suivra la crête, etc.^a

It will be noted that he substituted "passe" for "ligne." In the final draft, however, it will be noted that in this respect the language followed more closely the draft of Mr. Canning. It is quite apparent that it was supposed that the channel reached to about the fifty-sixth degree.

The line is to run "au Nord," that is, northwardly along Portland Channel, and to continue northwardly to that point on the land where it reaches the fifty-sixth degree.

It is to run "au Nord," not only "le long de la passe dite Portland Channel," but northwardly to the point where the line touches the fifty-sixth degree. The words "au Nord," qualify the entire distance along the channel and to the fifty-sixth degree, and not merely the length of Portland Channel. The line shall run northwardly until it reaches the said degree.

As will be shown under the discussion of the Fifth Question, the treaty was made with reference to certain maps, and to a chain of mountains which was depicted on them. It was admitted by the negotiators that there was great uncertainty as to the actual location of these mountains. The summit of the mountains is represented on Vancouver's chart seven, as existing in this vicinity in about latitude $55^{\circ} 50'$, and on his general chart in latitude about $56^{\circ} 10'$. Stapleton says:

The line . . . was . . . to ascend to the north along Portland Channel as far as the point of the continent where it *would strike* the 56° of north latitude, etc.^b

The Russian map of 1802, shows the mountains approximately at the same point, as Vancouver's Chart Seven.^c

Faden's map shows the mountains to be about $56^{\circ} 07'$.

If it shall be made clear that the negotiators contracted, with reference to a chain of mountains supposed to be near the head of Portland Channel, and near the 56th degree at its nearest approach

^a U. S. C. App., 218.

^c British Atlas, No. 5.

^b Memorandum by Dall, U. S. C. App., 106.

to the head of the channel, then it would seem to follow that, whether the mountains exist or not, that point on the degree nearest the supposed mountains was intended to be the point northwardly of the head of the Channel, to which the line should run, and that such point is to be determined by the apparent locality of the mountains which it is demonstrated they had in mind, and not by some other mountains which they clearly did not have in mind. The line was to be drawn "au Nord" to the degree, and "de ce dernier point la ligne de démarcation suivra la crête des montagnes."

The maps showed that the crest of the mountains, the head of the channel, and the fifty-sixth degree, did not exactly coincide. There was uncertainty as to the mountains, but none as to the fifty-sixth degree, and none as to where a line running up the channel prolonged would reach it. This point was, therefore, to be determined by the intersection of the prolonged line with the parallel, and "de ce dernier point," the line was to follow the crest of the mountains. Manifestly, the situation of the mountains being uncertain, the line was to be drawn from the determined point to the crest, and thence along the crest.

In the British Case is the following :

It is submitted that the point in the 56th parallel to which the line should be drawn is the point from which it is possible to continue the line along the crest of the mountains situated parallel to the coast, and, accordingly, that the point at which the 56th parallel and the crest of the coast mountains coincide is the point in question."

This proposition entirely ignores the fact that the point was fixed northwardly, and on the fifty-sixth parallel with reference to the supposed existence of a chain of mountains near where the head of the channel is nearest to the fifty-sixth degree.

The fact that no such chain exists in that vicinity, does not affect the location of the point. For the purpose of such fixation of this point by the negotiators, mountains assumed to exist and approximately located by the parties, were just as potential as if they had been real mountains.

But the unsoundness of the proposition put forward in the British Case becomes manifest by one simple test.

If we must seek the point where "it is possible to continue the line along the crest of the mountains," how will the point be fixed if it

"B. C., p. 69.

shall be determined that the mountains contended for in the British Case do not fulfill the conditions of the treaty? If it shall be determined that there are no such mountains within ten marine leagues of the coast, how can the point on the fifty-sixth parallel be fixed? Manifestly according to the proposition laid down, the point can never be determined, unless mountains such as are contemplated by the treaty shall be found within ten marine leagues of the coast, with a crest coincident with the fifty-sixth degree of latitude.

But the point was to be determined, whether or not, there was a mountain crest within ten marine leagues of the coast. The second paragraph of the fourth Article provides:

Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte depuis le 56me degré de latitude Nord au point d'intersection du 141me degré de longitude Ouest, se trouverait à la distance de plus de dix lieues marines de l'Océan, etc."

This provided for the contemplated condition that, from the point fixed on the 56th degree, there might be no mountains along the crest of which the line should be drawn. In such event the point was none the less to be fixed, and from it the line was to be drawn parallel to the coast. The boundary delimitation was not to fail if there was no crest of mountains parallel to the sinuosities of the coast, and within ten marine leagues of the ocean. The treaty was to be capable of being carried into effect, whether such mountains as those contemplated by it existed within the ten marine leagues or not, and also whether or not any mountains whatever existed in that region.

If the tribunal, from the language of the treaty can determine where the point on the 56th degree should be, in the event that they shall find against the British contention as to the crest along the coast mountains being west of the head of Portland Channel, it is manifest that finding "the point from which it is possible to continue the line along the crest of the mountains" from the 56th parallel, is not a condition precedent to determining where the line drawn from the head of Portland Channel shall meet the fifty-sixth parallel, and that it has nothing whatever to do with fixing that point.

The proposition when tested by the result, as worked out in the British Case, is wholly inadmissible. The line as drawn cuts off a

point on Bell Island, and gives a portion of the mainland coast to Great Britain. Any theory that so eventuates cannot stand under the treaty, for there is no possible construction of the treaty which will enable Great Britain to claim any part of any island opposite the mainland coast or any part of the mainland coast."

NINTH.

FIFTH QUESTION. "IN EXTENDING THE LINE OF DEMARCATION NORTHWARD FROM SAID POINT ON THE PARALLEL OF THE 56TH DEGREE OF NORTH LATITUDE, FOLLOWING THE CREST OF THE MOUNTAINS SITUATED PARALLEL TO THE COAST UNTIL ITS INTERSECTION WITH THE 141ST DEGREE OF LONGITUDE WEST OF GREENWICH, SUBJECT TO THE CONDITION THAT IF SUCH LINE SHOULD ANYWHERE EXCEED THE DISTANCE OF TEN MARINE LEAGUES FROM THE OCEAN, THEN THE BOUNDARY BETWEEN THE BRITISH AND THE RUSSIAN TERRITORY SHOULD BE FORMED BY A LINE PARALLEL TO THE SINUOSITIES OF THE COAST AND DISTANT THEREFROM NOT MORE THAN TEN MARINE LEAGUES, WAS IT THE INTENTION AND MEANING OF SAID CONVENTION OF 1825 THAT THERE SHOULD REMAIN IN THE EXCLUSIVE POSSESSION OF RUSSIA A CONTINUOUS FRINGE OR STRIP OF COAST ON THE MAINLAND, NOT EXCEEDING TEN MARINE LEAGUES IN WIDTH, SEPARATING THE BRITISH POSSESSIONS FROM THE BAYS, PORTS, INLETS, HAVENS, AND WATERS OF THE OCEAN, AND EXTENDING FROM THE SAID POINT ON THE 56TH DEGREE OF LATITUDE NORTH TO A POINT WHERE SUCH LINE OF DEMARCATION SHOULD INTERSECT THE 141ST DEGREE OF LONGITUDE WEST OF THE MERIDIAN OF GREENWICH?"

The discussion of the fifth question necessarily involves a consideration of the essential features of the sixth and seventh questions, which are as follows:

SIXTH QUESTION. "IF THE FOREGOING QUESTION SHOULD BE ANSWERED IN THE NEGATIVE, AND IN THE EVENT OF THE SUMMIT OF SUCH MOUNTAINS PROVING TO BE IN PLACES MORE THAN TEN MARINE LEAGUES FROM THE COAST, SHOULD THE WIDTH OF THE LISIÈRE WHICH WAS TO BELONG TO RUSSIA BE MEASURED (1) FROM THE MAINLAND COAST OF THE OCEAN, STRICTLY SO-CALLED, ALONG A LINE PERPENDICULAR THERETO, OR (2) WAS IT THE INTENTION AND MEANING OF THE SAID CONVENTION THAT WHERE THE MAINLAND COAST IS INDENTED BY DEEP INLETS FORMING PART OF THE TERRI-

TORIAL WATERS OF RUSSIA, THE WIDTH OF THE LISIÈRE WAS TO BE MEASURED (a) FROM THE LINE OF THE GENERAL DIRECTION OF THE MAINLAND COAST, OR (b) FROM THE LINE SEPARATING THE WATERS OF THE OCEAN FROM THE TERRITORIAL WATERS OF RUSSIA, OR (c) FROM THE HEADS OF THE AFORESAID INLETS?"

SEVENTH QUESTION. "WHAT, IF ANY EXIST, ARE THE MOUNTAINS REFERRED TO AS SITUATED PARALLEL TO THE COAST, WHICH MOUNTAINS, WHEN WITHIN TEN MARINE LEAGUES FROM THE COAST, ARE DECLARED TO FORM THE EASTERN BOUNDARY?"

The United States contends that the answer to the Fifth Question should be in the affirmative, and Great Britain contends that it should be in the negative.

Question Five is, whether or not, looking to all that is admissible under the Treaty, there is a demonstration that, according to the "original and effective understanding of the parties," it was "the intention and meaning of said Convention of 1825, that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast," as above indicated.

The "Parties" meant are, Russia, Great Britain and the United States, for the reference in the paragraph is to the "Parties to" said Treaties of 1825 and 1867. By "original and effective understanding of the parties," must be meant not only the interpretation of the treaty by reading the text in the light of all the facts surrounding and known to the negotiators and the contemporaneous exposition given by them, but also the practical interpretation put upon the Treaty by the parties, that is Russia, Great Britain and the United States, as shown by their affirmative acts respectively, and also by the inaction of any of the parties indicating acquiescence in an interpretation.

The expression in the treaty is, "original and effective understanding." It must be assumed that significance was intended to be given to both words "original" and "effective," and that both were deemed necessary to fully express the idea had in view, which seems to be that, not only the language of the treaty and of the negotiations leading up to it must be looked to for the purpose of finding out the meaning, but that what the parties did in pursuance of the treaty must also be looked to, and that from all of this the meaning must be evolved.

The Fifth Question does not involve any understanding as to the actual location of the line on the ground in the interior, but only its relevancy to the entire coast line of the bays and inlets. The question can be answered independently that the understanding was that the line should be drawn around all the heads of such waters. This can be done without fixing where it shall actually be located.

The question does not involve the answer to the question as to whether or not the line, in the absence of mountains responding to the conditions of the Treaty within ten marine leagues of the coast, shall be drawn the full distance of ten marine leagues.

That answer is dependent upon considerations that do not necessarily affect the answer to the Fifth Question. The Fifth Question can be fully answered without touching either of these propositions.

The British Case seems to concede that, if the line is to be drawn, not along the mountains, but parallel to the coast, it shall be drawn ten marine leagues from the coast. It says:

It is to be observed that this Treaty contemplates a shore-line such as admits of another line being drawn parallel to its sinuosities at a distance of 10 marine leagues."

It may appear, either from a construction of the Treaty alone, or from such construction taken in connection with the subsequent conduct of the parties, that it was the intent of the Treaty that Russia was to have, at all events, a continuous strip of the coast, and that this was such a clear and dominating feature of the treaty, that all doubtful language is to be regarded as subordinate to it, and to be construed so as to carry out this intent.

If such intent shall be demonstrated, it must prevail, and the actual location of the territorial boundary line must be a subordinate consideration.

It is contended for the United States:

1. That when the Treaty was made between Russia and Great Britain, both understood that from the fifty-sixth degree of North latitude to the 141st degree of longitude west of Greenwich, Russia was to have a continuous strip of coast separating the British possessions from all the waters of the ocean.

2. That this understanding was made manifest by them, as shown by their subsequent conduct.

3. That through their conduct such was the common understanding of the civilized world.

4. That with such understanding, and relying on it, the United States purchased this territory of Russia in good faith, and paid for it.

5. That the United States entered into possession of the territory so purchased, and exercised jurisdiction over it from 1867, down to the present time; that there was such possession and exercise of jurisdiction over the inland waters now in dispute and the coasts thereof, as to show at all times that, they were claimed by the United States, as having passed to it by the said treaties of 1825 and 1867, and that Great Britain had no sovereignty over such waters and coasts; that Great Britain never in any way set up any claim to any part of such waters or coasts until 1898, and that this course of conduct on her part demonstrates that it was her original and effective understanding of the treaty of 1825, that the *lisière* should continue unbroken around the heads of all the bays and inlets.

The present controversy arises out of conflicting views as to what the parties meant by "côte," "la crête des montagnes," "l'Océan," "*lisière*," and "sinuosities."

There is also a controversy as to whether or not there are mountains, such as are referred to in the treaty, situated within ten marine leagues of the coast. With much labored technical skill, sustained by a lively imagination, it is claimed that a mountain crest can be segregated from the jumble of mountain peaks, in disarray, in proximity to the coast, conformable in all essential qualities to the conditions of the treaty.

This line on a mountain crest, thus created by an arbitrary selection of disconnected peaks, is drawn on the British map so as to be parallel to a part of the coast, that is, what is styled in the British Case the general coast, or the mainland coast. Mountain summits are selected and connected with reference to this coast. The coast as an entirety, is cut up to match the mountains, and so by connecting peaks together, and denominating this a mountain crest, and disconnecting the natural coast into broken strips, a very happy combination is thought to be brought about, by which an original and effective understanding of the treaty of 1825 that no one ever dreamed of until more than fifty years after the treaty was made, is claimed to be demonstrated.

THE "COAST" REFERRED TO IN THE TREATY, TO WHICH THE MOUNTAINS WERE TO BE PARALLEL, AND TO THE SINUOSITIES OF WHICH, IF THE MOUNTAINS FAILED, THE LINE WAS TO BE DRAWN PARALLEL, WAS THE COAST OF ALL OF THE INTERIOR WATERS, SUCH AS TAKU INLET AND LYNN CANAL.

The United States claims that the coast is an unbroken coast, and that this is the dominating factor, that the coast, as meant by the treaty, must first be determined, and that there can be no mountains parallel to the coast, as called for by the treaty, which are perpendicular to or trend across the coast leading around the heads of the bays and inlets, and that all mountains which so trend are to be rejected from consideration. If the coast, or as the treaty expressed it "*lisière de côte*," is the controlling feature, then there will be no difficulty as to the meaning of "sinuosity." The line must be parallel to the coast that is meant and must follow the sinuosities of that coast. No mountains and no crest of mountains can divide such coast so as to deprive the United States of any part of it.

When the meaning of "coast" shall be determined, the actual location of the line will be a secondary proposition. Just where it will be situated with reference to the heads of the bays and inlets, is entirely subordinate to the proposition that it must, at all events, be situated somewhere to the interior of the heads of such bays and inlets.

The Treaty of 1825, in the third Article, provides that "*la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte*." The fourth Article, paragraph two, provides that, "*partout où la crête des montagnes qui s'étendent dans une direction parallèle à la côte * * * une ligne parallèle aux sinuosités de la côte*," etc.

It is contended by the United States that the word "*côte*" thus used means all the land bounding bays and inlets as well as that bounding the more open waters.

It is contended by Great Britain that the negotiators in using the word "*côte*" intended it to apply only to what in the British Case is styled in one place as "coast outside of narrow inlets," in another place, the "general coast," and in another "the general trend of coast" and in another "the mainland coast of the ocean," and that it

was intended that it should not apply to the shores of such waters as penetrate farther to the interior than a boundary line, drawn from headland to headland, under the law of Nations fixing the jurisdiction of a country over territorial waters.^a

The language of the treaty is:

Se trouverait à la distance de plus de dix lieues marines de l'Océan.

The United States contends that the word "océan" as here used is synonymous with "côte."

Great Britain says in its case:

It is clear that "côte" and "océan" refer to the same thing.^b

Thus the controlling word is "coast." When that meaning as understood by the parties is fixed, the meaning of "ocean," by the claims of both parties becomes coincident with it. Its sinuosities must be conformed to by the line.

THE MEANING OF THE WORD "CÔTE" AS UNDERSTOOD BY THE PARTIES PRIOR TO THE NEGOTIATIONS OF THE TREATY OF 1825.

The meaning has its foundations in the Ukase of September 4, 1821, which was the irritant that brought about the controversy that was concluded by the treaty.

THE MEANING OF COAST AS DEFINED IN THE UKASE OF SEPTEMBER 4, 1821.

In 1821 the Emperor Alexander issued an Ukase addressed "unto all Men" for the purpose of establishing rules in respect of the northwest coast of America.

The first rule was as follows:

The pursuits of commerce, whaling, and fishery, and of all other industry on islands, posts, and gulfs, including the whole of the northwest coast of America, beginning from Behring Straits to the 51° of northern latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring Straits to the South cape of the Island of Urup, viz., to the 45° 50' north latitude, is exclusively granted to Russian subjects.^c

This in terms includes "the whole of the northwest coast of America, beginning from Behring Straits to the 51st degree of northern latitude."

^a B. C., 72, 73, 74, 77.

^b B. C., 72.

^c U. S. C. App., 25-26.

The second rule was as follows:

It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also, to approach them within less than 100 Italian miles. The transgressor's vessel is subject to confiscation along with the whole cargo."

Thus all foreign vessels were by this rule forbidden to land upon any of the coasts described in the first rule.

The fourteenth rule was as follows:

It is likewise interdicted to foreign ships to carry on any traffic or barter with the natives of the islands, and of the north-west coast of America, in the whole extent here above mentioned. A ship convicted of this trade shall be confiscated."

This is an interdiction of trade with the natives "of the north-west coast of America in the whole extent" from Behring Sea to the 51st degree north latitude.

Russia thus asserted jurisdiction over every part of the north-west coast down to the 51st degree and forbade trade with the natives of this coast throughout "the whole extent."

No one would have the hardihood to deny that, by "côte", Russia here meant the entire shore line, including that of bays, inlets, and all interior salt waters. It cannot be said that Russia only intended to interdict trade on the mainland coast, or on the interior waters up to a point where the headlands were not more than six miles apart, or that she wanted to control the trade with the natives living on the coast bordering the open sea, but not with the natives living far up the Lynn Canal, Taku Inlet, and other like waters. If it be conceded that Russia intended that this ukase should apply as in terms it is expressed, to "the whole extent of the coast," and "the natives of the islands and of the north-west coast of America in the whole extent here above mentioned," then we start the inquiry before us with a full understanding of the meaning attached by Russia to the term "côte" as applied to such waters as those above indicated, when she provoked the controversy that was closed by the treaty. When Russia made a treaty in respect of these very rules, and of this very territory, and of these very coasts, it is inferable, unless the contrary shall be shown, that she did not intend to use the word "côte" in the treaty in a different sense from that in which she had used it in the ukase.

^a U. S. C. App., 25-26.

THE UNDERSTANDING OF THE UNITED STATES AND GREAT BRITAIN THAT THE UKASE APPLIED TO THE ENTIRE COAST.

This ukase was officially communicated to the governments at Washington and London.^a

Sir Charles Bagot, in transmitting an English translation of it to the Marquis of Londonderry, also sent as he himself expresses it, "a map of the northwest coasts of America," published by Russia.^b

This map is No. 5 of the Atlas of Great Britain, and shows all the coasts of the bays, inlets, etc., now in controversy. The Marquis of Londonderry understood that, by the description used in the ukase, of the "whole of the northwest coast of America," Russia asserted "exclusive sovereignty over the territories therein described." In his letter to Count Lieven of January 18, 1822, he says:

In the meantime, upon the subject of this Ukase generally, and especially upon the two main principles of claim laid down therein, viz., an exclusive sovereignty alleged to belong to Russia over the territories therein described, as also the exclusive right of navigating and trading within the maritime limits therein set forth, his Britannic Majesty must be understood as hereby reserving all his rights, not being prepared to admit that the intercourse which is allowed on the face of this instrument to have hitherto subsisted on those coasts, and in those seas, can be deemed to be illicit, or that the ships of friendly Powers, even supposing an unqualified sovereignty was proved to appertain to the Imperial Crown in these vast and very imperfectly occupied territories, could, by the acknowledged law of nations, be excluded from navigating within the distance of 100 Italian miles as therein laid down from the coast, the exclusive dominion of which is assumed (but, as His Majesty's Government conceive, in error) to belong to His Imperial Majesty the Emperor of all the Russias.^c

The effect of the meaning of "côte," as used in the Ukase, was set forth by Pelly, Deputy Governor of the Hudson's Bay Company, whose judgment was stimulated by the keenest interest to protect that company's trade. In a letter to the Marquis of Londonderry March 27, 1822, he said:

The fur trade of Great Britain, by an Act of last Session and grant from His Majesty, is vested in the Hudson's Bay Company; I cannot, therefore, refrain from calling your Lordship's attention to this matter as of considerable importance at the present moment, and not unlikely to lead to very unpleasant occurrences at some future period, if no notice is taken of these proceedings of the

^a U. S. C. App., 31, 95.

^c U. S. C. App., 105.

^b U. S. C. App., 101-102.

Russian and American Governments, the effect of which would be to exclude British subjects from the northwest coast of America, and a valuable trade in the interior.^a

Mr. Stratford Canning understood it likewise. In a letter of February 19, 1822, addressed to the Marquis of Londonderry, he said:

I was informed this morning by Mr. Adams that the Russian Envoy has, within the last few days, communicated officially to the American Government, an Ukase of the Emperor of Russia, which has lately appeared in the public prints, appropriating to the sovereignty and exclusive use of His Imperial Majesty the northwest coast of America down to the 51st parallel of latitude, etc.^b

To the same effect was the understanding of the Duke of Wellington. In a memorandum enclosed by him under cover of a letter of November 28, 1822, addressed to Mr. G. Canning, he says:

In the month of September, 1821, His Imperial Majesty, the Emperor of Russia, issued an Ukase, asserting the existence in the Crown of Russia of an exclusive right of sovereignty in the countries extending from Behring's Straits to the 51st degree of north latitude on the west coast of America, etc.^c

John Quincy Adams, Secretary of State of the United States, understood at that time that Russia's claim to the coast embraced the entire coast, including the sinuosities of the inlets.

In a letter to Mr. Middleton, American Minister at St. Petersburg, July 22, 1823, he said:

From the tenor of the Ukase, the pretensions of the Imperial Government extend to an exclusive territorial jurisdiction from the forty-fifth degree of north latitude on the Asiatic coast to the latitude of fifty-one north on the western coast of the American continent; and they assume the right of interdicting the *navigation* and the fishery of all other nations to the extent of 100 miles from the whole of that coast. . . .^d

His understanding that the claim of Russia embraced the entire coast is very important, when considered in connection with the fact hereinafter brought out, that the United States acquired rights of trade with the natives inhabiting those portions of the coast now in controversy, by the Treaty of 1824, which rights Great Britain expressly insisted upon securing for herself in identically the same form, in the Treaty of 1825.

These rights are in direct conflict with the pretension that Great Britain, by the Treaty of 1825, acquired territorial sovereignty over

^a U. S. C. App., 107.

^b U. S. C. App., 106.

^c U. S. C. App., 113.

^d U. S. C. App., 48-49.

any part of these interior coasts above $54^{\circ} 40'$ north latitude. Thus it is perfectly plain that by the claim of Russia to sovereignty over all the northwest coast of America above 51 degrees north latitude up to Bering Strait, and by interdicting trade with the natives of that coast throughout its whole length, Russia, Great Britain and the United States understood distinctly that by "coast" was meant the entire boundary of all of the waters of the bays and inlets in controversy.

CLAIM OF GREAT BRITAIN TO NORTHWEST COAST.

Great Britain set up a vague, indefinite claim in conflict with the claim of Russia. It is indicated by Mr. Pelly, Deputy Governor of the Hudson's Bay Company to Mr. George Canning in a letter of September 25, 1822. It is based upon the occupancy by the Hudson's Bay Company of trading stations in the interior of the country then known as New Caledonia, which he describes as being west of the Rocky Mountains and extending from about 49° latitude north to about 60° north latitude. He indicates the location of these stations, but none of them are near any part of the coast. He adds:

By these means an extensive trade is carried on with all those Indian tribes which inhabit the country from about 60° north latitude as far south as the mouth of Fraser's River, which is in about 49° north latitude, and between the Rocky Mountains and the sea.

The British fur traders have never met with the traders of any other nation in that country, and it does not appear that any part of it has ever been occupied by the subjects of Russia or of any other foreign Power.

All the considerable rivers which fall into the Pacific Ocean in this extent of coast have not yet been sufficiently explored to ascertain whether any of them are navigable with large boats, and have safe harbours at their discharge into the sea; the furs procured in that country have therefore been brought to England down the Peace River and through the Hudson's Bay Company's territories. But it is probable that, in such an extent of coast, some practicable communication with the sea will be discovered which would save the expensive transport of goods and furs through the interior of America. . . .

I have thus given a brief outline of the British trading stations on the northwest coast of America, etc.^a

Although he designates these stations as being "on the northwest coast of America," not one of them is situated west of the 127th degree of west longitude. The nearest one indicated is about the

^a U. S. C. App., 109-110.

127th degree, which is nearly four degrees east of the head of Portland Channel.

He speaks of trade carried on with all those Indian tribes inhabiting that country and of the "rivers which fall into the Pacific Ocean on this extent of coast."

It is manifest from his letter that he understood that "this extent of coast" included all those waters into which "all the considerable rivers debouched," such as Taku Inlet and Lynn Canal, and that he regarded these waters as part of the Pacific Ocean.

On the basis of this letter the Duke of Wellington in the memorandum enclosed with his letter of November 28, 1822, to Mr. Canning, said:

Now we can prove that the English Northwest Company and the Hudson's Bay Company have for many years established forts and other trading stations in a country called New Caledonia, situated to the west of a range of mountains called Rocky Mountains, and extending along the shores of the Pacific Ocean from latitude 49° to latitude 60°.^a

He adds:

Thus, in opposition to the claim founded on discovery, the priority of which, however, we conceive we might fairly dispute, we have the indisputable claim of occupancy and use for a series of years, which all the best writers on the laws of Nations admit is the best founded claim to a territory of this description.

Objecting as we do to this claim of exclusive sovereignty on the part of Russia, I might save myself the trouble of discussing the particular mode of its exercise as set forth in this Ukase, but we object to the mode in which the sovereignty is proposed to be exercised under this Ukase, not less than we do the claim of it.^a

CLAIM OF THE UNITED STATES TO NORTHWEST COAST.

The United States likewise preferred a claim "to the whole coast as high as the 61st degree." Sir Charles Bagot, in a letter to Mr. G. Canning, of October 17, 1823, wrote:

Although Mr. Middleton has not communicated to me the instructions which he had received, I have collected from him, with certainty what I had long had reason to suspect, that the United States, so far from admitting that they have no territorial pretensions so high as the fifty-first degree of north latitude and no territorial interest in the demarcation of boundary between His Majesty and the Emperor of Russia to the north of that degree, are fully prepared to assert that they have at least an equal pretension with those powers to the whole coast as high as the sixty-first degree, and an absolute right to be parties to any subdivision of it which may now be made.^b

^a U. S. C. App., 113.

^b U. S. C. App., 129.

THE BEGINNING OF THE NEGOTIATIONS.

With the issues thus made up, and the subject matter of controversy fully understood, in exactly the same sense, by all three of the parties, the negotiations began. It would not be profitable to devote any time to an examination of the relative strength of the several claims to the coast in question. Doubtless, for the purpose of driving a better bargain, the claim of Great Britain was put forward with conscious extravagance; but this is comparatively unimportant in this discussion, as the Treaty of 1825 does not purport to express a settlement of conflicting rights, in any sense, in accordance with the way such rights were respectively stated or urged. On the contrary, all questions of right were expressly waived. It is, however, important to observe that while this was avowed by both Great Britain and Russia, Russia at no time, receded from, but always, down to the conclusion of the negotiations, asserted her claim of actual and undisputed sovereignty over all of the coast north of the 55th degree. This is significant in connection with determining whether or not Russia ever understood that she was abandoning to Great Britain any part of the coast over which she had always asserted sovereignty.

A declaration of sovereignty made, and never departed from at any stage of the negotiations, cannot fail to be a strong exponent of the understanding by the parties, of the language used for the purpose of finally determining their controversy.

*THE NEGOTIATIONS OF THE TREATY OF 1825 DID NOT PROCEED UPON STRICT RIGHT,
BUT UPON CONSIDERATIONS OF MUTUAL EXPEDIENCY.*

Count Lieven said to Mr. George Canning in a letter of January 19, 1823:

Before leaving Verona the undersigned was ordered to present to the Government of His Britannic Majesty a new proof of the Emperor's well known feelings by proposing to His Excellency, Mr. Canning, Chief Secretary of State for Foreign Affairs of His Britannic Majesty (without permitting this proposition to prejudices the rights of His Imperial Majesty should it not be accepted), that the question of strict right be temporarily set aside on the part of both and that all the differences to which the regulation in question has given rise be adjusted by an amicable arrangement founded on the sole principle of mutual expediency, to be negotiated at St. Petersburg.^a

^a U. S. C. App., 118.

On this basis the negotiations were taken up by Great Britain. Mr. George Canning communicated to Sir Charles Bagot, February 5, 1823, a copy of the note of Count Lieven and requested him to proceed to open the discussion.^a

In a letter from M. Poletica to Count Nesselrode of November 3, 1823, it is said:

In the midst of this argument the British Ambassador suddenly suspended the discussion in order to tell me that his Government had, after all, no intention of discussing the territorial question according to the abstract principles of public law or of international law; that that would have the effect of rendering the discussion interminable; that the cabinet of London expected a more satisfactory result for the two parties interested, from an amicable arrangement which would be based only upon mutual consent, and that his instructions had been drawn up in that spirit.

I replied to Sir Charles Bagot that in the matter in question, so far as I could foresee the views of the Imperial Government, I believed that I could take upon myself boldly to assure him that they were in perfect agreement with those of the cabinet of London. I then asked him to tell me the point of demarcation, which, in the opinion of his Government, ought to divide the respective possessions on the northwest coast of America.^b

In a letter of March 17, 1824, from Sir Charles Bagot to Mr. Canning, he said:

I then laid before them [Count Nesselrode and M. Poletica] Count Lieven's note to you of the 31st January, 1823, proposing that the question of strict right should be provisionally waived on both sides, and that the adjustment of our mutual pretensions should be made upon the sole principle of the respective convenience of both countries.

This basis of negotiation being willingly accepted by all parties, I stated that, etc.^c

THE MOTIVES WHICH ACTUATED THE PARTIES WERE THE ADVANTAGES TO BE SECURED FROM CONTROLLING THE RIGHTS OF FISHING AND HUNTING AND OF TRADE WITH THE NATIVES ALONG THE COAST, AND THE QUESTION OF TERRITORIAL SOVEREIGNTY WAS DIRECTED TOWARD SECURING THESE RIGHTS AND NOT MERELY DOMINION OVER AN EXTENT OF LAND.

At that time no gold had been discovered in that region, and no question of mineral values was ever mooted in any way by any of the negotiators, or by the representatives of the trading companies of Russia, and Great Britain, which were rivals in that part of the

^a U. S. C. App., 119.

^c U. S. C. App., 154.

^b U. S. C. App., 140.

world. The country along the whole of the northwest coast of America was known to be bleak, inhospitable, mountainous and inaccessible, offering then no inducements for the acquisition of land for anything that might be gotten out of it, or produced by it. It was trading in furs, and the development of fisheries that induced the adventurous spirits of that age to exploit that remote region. The particular advantage that could arise from sovereignty over the coast in question was, from control of, and exclusive enjoyment of, the fur trade with the Indians inhabiting it.

It was known to all parties during the pendency of the negotiations for the treaty that the natives, with whom such trade was carried on, lived along the rivers, bays and inlets. Thus with a full understanding as to what was meant, by all the parties, by the expression "the whole of the northwest coast," and also with a full understanding of the advantages that were to be secured through the exercise of territorial sovereignty, in appropriating exclusively the trade with the inhabitants, they proceeded to frame the treaty upon the sole principle of the "respective convenience of both countries."^a

There are two important and controlling ideas which must be kept in view in interpreting the language of the parties. Great Britain had as her main object the disavowal by Russia of her claim of control over the waters within 100 Italian miles of the coast, while Russia, having at the very outset privately declared her purpose of making such disavowal, sought to secure by the treaty the rights which she had asserted over the whole extent of the coast, at least from the 55th degree northward. It being understood by both parties that, in any event as to the territorial boundaries, the objectionable features of the Ukase as to the 100 mile limit would be withdrawn, Sir Charles Bagot, in his letter to Mr. George Canining of March 17, 1824, stated the object had in view by the respective parties as follows:

This basis of negotiation being willingly accepted by all parties, I stated that, so far as I understood the wishes and interests of Russia, her principal object must be to secure to herself her fisheries upon the islands and shores of the northwest coasts of North America, and the posts which she might have already established upon them; that, on the other hand, our chief objects were to secure

^a U. S. C. App., 154.

the posts upon the continent belonging to the Hudson Bay Company, the embouchures of such rivers as might afford an outlet for our fur trade into the Pacific, and the two banks of the Mackenzie River; that, in the belief that such were our respective objects, I would propose as our boundary a line drawn through Chatham Straits to the head of Lynn Canal, thence northwest to the 140th degree of longitude west of Greenwich, and then along that degree of longitude to the Polar Sea.^a

He shows that he communicated to the Russian representative this understanding that, the wishes and interests of Russia were to secure herself in respect of the "shores of the northwest coast of North America." He stated some of the objects very clearly, but he made no reference to the trade with the Indians inhabiting the coast, which was expressly and exclusively reserved in the Ukase. It was made manifest then, and in the outcome of the treaty, that his proposition by no means secured to Russia, her fisheries upon the islands and shores upon the northwest coast of America, and that it was by no means sufficient to protect the trade, which was one of the main objects she had in view.

*CERTAINTY WAS DESIRED IN THE TREATY AND THE PREVENTION OF ANY
DISAGREEABLE DISCUSSION IN THE FUTURE.*

It was apparent throughout that both parties were desirous that the controversy should be definitely settled and that the boundary should be fixed with certainty. In a letter of Sir Charles Bagot to Mr. George Canning August 19, 1823, he says:

I have suggested to him [Count Nesselrode] that this settlement may perhaps be best made by convention, and I have declared our readiness to accede to one framed either upon the principle of joint occupancy or demarcation of boundary as the Russian Government may itself prefer, intimating, however, that in our view, the latter is by far the most convenient. Count Nesselrode immediately and without hesitation declared himself to be entirely of that opinion, and he assured me that the chief if not the only object of the Imperial Government, was to be upon some certainty in this respect.^b

Count Lieven wrote to Count Nesselrode that Mr. Canning, when he gave him a copy of the dispatch accompanying the ratification of the convention, and called his attention to the insistence of the English government that the line should be fixed by a distance limit, and not merely by the mountain crest, assured him that it

^aU. S. C. App., 154.

^bU. S. C. App., 126-127.

arose "solely from a sincere desire to prevent the recurrence of any disagreeable discussion in future."

The Russian view is made entirely clear in the letter from M. Poletica to Count Nesselrode of November 23, 1823. He says that he had conferred with Count de Lambert, the representative of the interests and wishes of the Russian-American Company, and that:

In fixing the longitude Count de Lambert had mainly in view the establishment of a barrier at which would be stopped, once for all, to the north as to the west of the coast allotted to our American Company, the encroachments of the English agents of the amalgamated Hudson Bay and Northwest English Company, whom a more intimate acquaintance with the country traversed by the Mackenzie River might easily bring in the course of time into the neighborhood of our establishments.^a

With this desire on both sides to secure certainty, and to prevent disagreeable differences in the future, it is not to be accepted without the strongest proof, that they intended to give to the word "coast," which was the most important feature of the territorial branch of the treaty, a new, or unusual, meaning.

THE MEANING OF "CÔTE" AS SHOWN BY THE NEGOTIATIONS.

THE FIRST SUGGESTION AS TO A LINE.

Sir Charles Bagot, in a letter to Mr. George Canning of August 19, 1823, says that, in an interview with Count Nesselrode, he told him that, the British pretensions had, he believed, always extended to the 59th degree of north latitude, but that a line of demarcation drawn at the 57th degree would be entirely satisfactory to Great Britain.^b

So far as the record shows, this is the first definite suggestion in regard to a division line. It does not appear that any indication was given as to how he proposed the line should be drawn northwardly on the continent.

THE SECOND SUGGESTION AS TO A LINE.

The second suggestion appears to have been made by M. Poletica to Sir Charles Bagot. In a letter from him to Count Nesselrode of October 17, 1823, he says:

This point having been explained, Chevalier Bagot requested me to inform him what, in the opinion of the Imperial Government, should be the line of separa-

^a U. S. C. App., 137-138.

^b U. S. C. App., 127.

tion between our possessions on the northwest coast of America and those which England thought herself entitled to claim. I thought that it would be better to meet the question frankly. Consequently, avoiding circumlocutions [I said], that the Imperial Government would think that it had made all the concessions required by its moderation and its earnest desire to maintain a good understanding with all foreign powers by fixing the boundary between the Russian and English possessions at the fifty-fourth degree of latitude, and by giving for the longitude such a line as in its prolongation in a straight line toward the pole would leave the Mackenzie River outside of the Russian frontier.

Chevalier Bagot, after a moment's reflection, replied, that the point of demarcation which I had just designated was very far from being that which his Government would have wished to fix.^a

THE THIRD SUGGESTION AS TO A LINE.

The third suggestion was made by Sir Charles Bagot. This was communicated to M. Poletica in October, 1823. Sir Charles says in a letter to Mr. Canning:

And I then gave him to understand that the British Government would, I thought, be satisfied to take Cross Sound, lying about the latitude of $57\frac{1}{2}^{\circ}$, as the boundary between the two powers on the coast and a meridian line drawn from the head of Lynn Canal, as it is laid down in Arrowsmith's last map, or about the 135th degree of west longitude, as the boundary in the interior of the continent.^b

This undoubtedly put all of the west coast of Lynn Canal in Russian territory.

Mr. Canning understood Sir Charles Bagot to mean the 135th degree of longitude, for he says in his letter to him of January 15, 1824:

But if that were too much to insist upon the 135th degree of longitude as suggested by Your Excellency, northward from the head of Lynns Harbour might suffice.

It would, however, in that case be expedient to assign, with respect to the mainland southward of that point, a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward. We must not on any account admit the Russian territory to extend at any point to the Rocky Mountains.^c

This would put both shores of Lynn Canal, throughout its whole extent, in Russian territory.

^a U. S. C. App., 139.

^c U. S. C. App., 148.

^b U. S. C. App., 131.

This suggestion was made verbally, and there is a difference in the accounts given in regard to it by Sir Charles Bagot and M. Poletica. M. Poletica, in a letter to Count Nesselrode of November 3, 1823, said:

Chevalier Bagot then placed himself before the geographical map which was at hand, and traced upon it with his finger a line beginning at the 57th degree of latitude, the intersection of which designated the 135th degree of longitude west of Greenwich, precisely at the point where our establishment of Novo-Archangelsk appears to be.^a

Thus his understanding, as to the 135th meridian, was the same as Mr. Canning's. According to his understanding, the suggestion put both shores of Lynn Canal, throughout its whole extent, in Russian territory.

THE FIRST FORMAL PROPOSAL OF SIR CHARLES BAGOT.

In the first formal proposition made by Sir Charles Bagot he proposed as the boundary:

a line drawn through Chatham Straits to the head of Lynn Canal, thence north-west to the 140th degree of longitude west of Greenwich, and then along that degree of longitude to the Polar Sea.^b

This likewise assigned the entire coast, on the west side of Lynn Canal, to Russia.

CONTRE-PROJET BY RUSSIA.

In the counter proposition of the Russian plenipotentiaries, the proposition made by Sir Charles Bagot was not even entertained. The proposal was to begin at the southern extremity of Prince of Wales Island, and "follow Portland Channel up to the mountains which border the coast."^c That is, follow the channel to the end, and thence to the mountains. This meant continuity in that direction, until the line should reach the mountains. The mountains meant are those "which border the coast"; that is to say, the coast of that channel. It seems to have been understood that the Portland Channel reached about the 56th degree, for in the observations on the amended proposal of Sir Charles Bagot, the plenipotentiaries of Russia say:

^a U. S. C. App., 140.

^b U. S. C. App., 154.

^c U. S. C. App., 157-158.

For these reasons the plenipotentiaries of Russia have proposed as limits upon the coast of the continent to the south, Portland Channel, the head of which lies about (par) the 56th degree of north latitude.^a

It is important to note that this is the first time in the negotiations that any reference is made to mountains, and coast, and to the sinuosities of the coast. None of these words had before been used. The reference is distinctly to the mountains which border the coast at Portland Channel, and from this point "la limite remonteroit le long de ces montagnes parallèlement aux sinuosités de la côte."^b

It was thus plainly indicated to Great Britain that the head of Portland Channel was regarded by them as "coast." From that point the boundary would "ascend along those mountains parallel to the sinuosities of the coast." Unquestionably this meant parallel to all the coast throughout its extent, which had been claimed by Russia, parallel to the coast of waters similar to Portland Channel, and parallel, not to a mainland or general coast, but to a sinuous coast.

This proposition was never materially departed from by Russia. It was, in all of its essential qualities, embodied in the treaty. The purpose and significance of the words "coast" and "mountains" were never modified.

AMENDED PROPOSAL BY SIR CHARLES BAGOT.

In his amended proposal Sir Charles Bagot offered to accept a line "along the middle of the channel which separates Prince of Wales and Duke of York Islands from all the islands situated to the north of the said islands until it touches the mainland (*terre ferme*); thence extending in the same direction on the mainland to a point ten marine leagues from the coast the line would run from this point toward the north and northwest parallel with the sinuosities of the coast, and always at a distance of ten marine leagues from the shore, as far as the 140th degree of longitude (Greenwich), the prolongation of which it would then follow to the Polar Sea."^c Thus after reaching a point in the interior ten marine leagues from the coast the line was to run "parallel with the sinuosities

^a U. S. C. App., 161.

^b U. S. C. App., 158.

^c U. S. C. App., 159.

of the coast and always at a distance of ten marine leagues from the shore."

It is here plain that, the sinuous coast referred to was identical with "shore," for he uses these words as equivalents, and that neither Sir Charles Bagot, nor any one else understood that he meant, by following a line "parallel with the sinuosities of the coast, and always at a distance of ten marine leagues from the shore," to indicate a coast line drawn from headland to headland, and that he meant to throw, by the line indicated, into English territory any portion of the bays and inlets here in controversy. He, however, explains his own meaning in indubitable terms.

The Russian plenipotentiaries explained in their observations upon his amended proposal, that the most important advantage was "to prevent the respective establishments on the northwest coast from injuring each other and entering into collision." They added: "It was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers."^a

In reply to this Sir Charles Bagot said:

Any argument founded on the consideration of the practical advantage of Russia could not fail to have the greatest weight, and the Plenipotentiary of His Britannic Majesty did not hesitate to give up, in consequence of this observation of the Russian Plenipotentiaries, the line of demarcation which he had first proposed, to wit: one passing along the middle of Chatham Straits as far as the northern extremity of Lynn Channel, and thence to Mount Elias, or to the intersection of the 140th degree of longitude; and to offer another which would secure to Russia, not only a strip on the continent, opposite the southernmost establishment which she possesses on the islands, but also the possession of all the islands and waters in its vicinity or which are situated between that establishment and the mainland (*terre ferme*); in short, possession of all that could in future be of any service, either to its stability or its prosperity.^b

Thus he explained that he proposes to give, "not only a strip on the continent," but also the possession "of all the islands and waters in its vicinity" and, in short, "possession of all that could in future be of any service, either to its stability or its prosperity." All the waters in its vicinity did not mean a division of the waters, so that Great Britain would own waters actually touch-

^a U. S. C. App., 161.

^b U. S. C. App., 163.

ing the boundary line, and stability could not be secured by a broken strip on the continent, penetrated by inlets, lying partly within the jurisdiction of one country and partly within that of the other. Is it at all compatible with this representation on his part, that he expected the line to be so drawn, and parallel to such a coast, that there would be a division of jurisdiction over inland waters, and that Great Britain might maintain establishments on the coasts of these waters, in absolute contact with the establishments that Russia might wish to maintain for trading with the Indians upon adjoining parts of such coasts?

It is to be observed that he makes no reference to mountains, but fixes a constant distance of ten marine leagues from the shore, and parallel with the sinuosities of the coast, which term up to that time had never admitted of any doubt or dispute.

In explaining his amended proposal to Mr. Canning in his letter of March 17, 1824, he said:

I entertained sanguine expectations that such a proposal, coupled with the concession of a line of coast extending 10 marine leagues into the interior of the continent, would have been considered as amply sufficient for all the legitimate objects which Russia could have in view, and quite as much as she could pretend to with any shadow of real claim or justice."

When he was speaking of conceding "a line of coast extending ten marine leagues into the interior of the continent," can it be for a moment imputed to him, that by such "line of coast," he meant that kind of coast line, which under the law of nations, was authorized for the purpose of determining territorial waters? If he had ever had such an idea, would he not, in view of the well understood interests of Russia, which she was seeking to protect by the treaty, and of the previous well understood meaning of the word "coast," have been bound in frankness to disclose this new meaning which he proposed to attach to the word? Can it be assumed that, when he had made two propositions to Russia, by which she got the entire western coast of Lynn Canal, and they had been rejected by her as unsatisfactory, he meant by this proposition to go thirty miles into the interior away from the coast, and then to run the line so as to deprive Russia of a large part of the coast of Lynn Canal, for which he had never contended?

FINAL PROPOSITION OF SIR CHARLES BAGOT.

His last proposition, proposed March 12, 1824, was, so far as the coast line is concerned, exactly like his third proposition.^a

FINAL DECISION OF RUSSIAN PLENIPOTENTIARIES IN THE NEGOTIATIONS WITH SIR CHARLES BAGOT.

The final decision of the Russian plenipotentiaries was directed to that part of the coast opposite the Island of Prince of Wales, which island was conceded to Russia by Sir Charles Bagot's last proposition. There was then no controversy as to that portion of the coast, north of Prince of Wales Island. It was for this reason that the Russian plenipotentiaries said "That the possession of Prince of Wales Island without a slice (*portion*) of territory upon the coast situated in front of that island could be of no utility whatever to Russia."^b

Negotiations were broken off, not on account of any difference of meaning attached to the word "côte," not upon any question as to its embracing inland waters, but as to how the coast should be divided on an east and west line. Thus Russia never departed from the original line dividing the coast, suggested by her, and showed that she would not yield her right to any of the coast north of 54° 40'. In a letter of April 11, 1824, written to Mordvinof, after the negotiations had come to an end, Count Nesselrode, in explaining the Russian attitude, said:

By rights of first discovery, and by that which is still more real, the first establishment of habitations and human activity our cabinet demands possession both of the islands and the western coast of America from the furthest north to the 55th degree of latitude.^c

Referring to the differences that might arise, he says:

For this only one expedient presents itself; to establish at some distance from the coast a frontier line which shall not be infringed by our establishments and trappers, as also by the hunters of the Hudson's Bay Company.^c

In his letter to Count Lieven of April 17, 1824, he reviews the negotiations and sums up the situation. He states that the Ukase of September 4, 1821, carries "the domains of Russia on the north-west coast of the American Continent down to the 51st degree of

^a U. S. C. App., 163.

^b U. S. C. App., 164.

^c U. S. C. App., 167.

north latitude,"^a and that, in the spirit of conciliation, they were willing to yield their claims below the 55th degree, excepting that it was desired to extend the line far enough south to include the whole of Prince of Wales Island. He adds:

This proposal will assure to us merely a narrow lisière [strip] upon the coast itself and will leave to the English establishments all the needful space for increase and extension."

By the word "coast," as here used, it cannot be believed that he meant anything else than sovereignty over the entire coast, which they had insisted upon from the first and had never in the least degree departed from. He then proceeds:

In the first place, no nation has protested against the charter of the Emperor Paul, and this universal silence may and should be regarded as a recognition of our rights. The objection is raised that we have not made establishments on the northwest coast below the 57th degree of latitude. This is true, but during the season of hunting and fishing the coast and the neighboring waters are exploited by our American Company far beyond the 55th degree and 54th degree parallels. This is the only manner of occupation of which these localities admit, or, at least, the only one that is necessary, with colonies founded and organized a little farther north. . . .

Thus, we wish to *keep* and the English companies wish to *obtain*. This circumstance alone is sufficient to justify our proposals."

As Russia stood immovable in regard to the coast, Great Britain acceded to her well understood demands on this vital point, and on May 29, 1824, Mr. George Canning wrote to Count Lieven that, after mature consideration of the dispatches from Count Nesselrode, he had the satisfaction of saying that he would send such instructions, as would meet in a great degree the wishes of Russia, as to the line of demarcation to be drawn between Russian and British occupation on the northwest coast of America, and to admit, with certain qualifications, the terms last proposed by the Russian Government. These qualifications were to consist chiefly, of a more definite description of the limit of the land desired by Russia on the continent, and the selection of a somewhat more western degree of longitude above Mt. St. Elias, and a precise stipulation for "the free use of all rivers which may be found to empty themselves into the sea within the Russian frontier, and of all

^aU. S. C. App., 172-175.

seas, straits and waters which the limits assigned to Russia may comprehend."^a

On July 12, 1824, Mr. Canning wrote to Sir Charles Bagot, that:

After full consideration of the motives which are alleged by the Russian Government for adhering to their last propositions respecting the line of demarcation, etc., * * * it was resolved to consent to take as the line a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel, till it strikes the mainland in latitude 56 degrees; thence following the sinuosities of the coast, along the base of the mountains nearest the sea to Mount Elias, and thence along the 139th degree of longitude to the Polar Sea.^b

Thus it was conceded that the motives alleged by the Russian Government should control. It was fully understood that these motives were to secure a strip of the coast over which Russia had for so long a time claimed sovereignty, and that this strip was to be of such a nature, as to be a barrier, except through navigation of rivers, from the British side, and that it was to preserve their commerce, through the establishment of sovereignty over the coasts, as they had always been defined. There is no pretext for claiming that Russia ever had in mind a political coast, from which, under the laws of nations, the sovereign right was to be projected beyond the actual coast, but on the contrary, everything showed that Russia contemplated only, an actual and sinuous coast, forming an unbroken strip.

With this letter Mr. Canning transmitted a "draft convention" in French and English, which was submitted to Russia.

The line to the south was as yet unsettled, but as to some things there was perfect accord. The most important of these, in view of the present controversy, was what all parties understood by the word "coast."

It is therefore of the utmost significance to consider the language in which he set forth in his draft, what he knew to be the understanding of the parties on this point. Note should be taken that there had not only never been any controversy as to what the parties understood the term "coast" to mean, but that no such controversy ever arose at any time, from the beginning of the negotiations to the execution of the treaty, and that, in respect

^a U. S. C. App., 180.

^b U. S. C. App., 181.

of the manifest use of this word, there was never any substantial departure from the original draft made by Mr. Canning.

ANALYSIS AS TO THE USE OF THE WORD "COAST" IN THE DRAFT CONVENTION
SUBMITTED BY MR. CANNING.^a

In the preamble he says that the desire is to proceed "sur le principe d'une convenance réciproque." Russia had already explained that this meant to it an absolute barrier. This explanation had been accepted by Mr. Canning, and in his letter submitting the draft, he stated that Great Britain had consented, "after full consideration of the motives which are alleged by the Russian Government for adhering to their last propositions."^b These motives were not left to conjecture, but were specifically stated. In the counter draft by the Russian plenipotentiaries they said:

The principal motive which constrains Russia to insist upon sovereignty over the above indicated lisière (strip of territory) upon the mainland (terre ferme) from Portland Channel to the point of intersection of 60 degrees latitude with the 139th degree longitude is that, deprived of this territory, the Russian-American Company would have no means of sustaining its establishments, which would therefore be without any support (point d'appui) and could have no solidity.^c

Again, in their observations on Sir C. Bagot's amended proposal, they said:

On the other hand, the Russian Plenipotentiaries have the honor to remind him, once more, that without a strip of land on the coast of the continent from Portland Channel, the Russian Establishments on the adjoining islands would be left unsupported, that they would be left at the mercy of those Establishments which foreigners might form on the mainland, and that all settlements of this nature, from being grounded upon the principle of mutual conveniences, would offer only dangers to one of the parties and exclusive gains to the other.^d

It would need no argument to show that everything sought here to be guarded against would have resulted, if Russia had agreed that the *lisière* of coast, instead of being continuous around all of the waters of the sea, had been a *lisière* of different parts of coasts divided by inland waters, with the sovereignty of them to the east and north of such dividing lines vested in England. Her motives were somewhat elaborated in argument, in respect to that portion

^a U. S. C. App., 182, *et seq.*

^b U. S. C. App., 181.

^c U. S. C. App., 158.

^d U. S. C. App., 161. B. C. App., 72.

of the coast opposite Prince of Wales Island in regard to which the dispute was then hinging. It is said in Russia's final decision:

That the possession of Prince of Wales Island without a slice (*portion*) of territory upon the coast situated in front of that island could be of no utility whatever to Russia. That any establishment formed upon said island or upon the surrounding islands would find itself, as it were, flanked by the English establishments on the mainland and completely at the mercy of these latter. ^a

The same argument brought forward here, in respect to the portion of the coast then in dispute, was equally applicable to that portion north of it, about which there was no dispute, and it is manifest from what was said in regard to the coast opposite Prince of Wales Island, that Russia would not have for a moment tolerated any discussion of such a broken *lisière* as is now contended for by Great Britain, opposite any of the islands north of Prince of Wales Island.

As expressed by Mr. Canning in his draft convention, it was to determine "*les limites de leurs possessions et établissements sur la côte nord-ouest de l'Amérique.*" ^b

Mr. Canning, who knew full well that Russia had claimed the entire coast down to parallel 51 degrees north, and that the expression "*la côte nord-ouest de l'Amérique*" was never understood by the parties as meaning merely the mainland coast, or to exclude the coast bounding interior waters, could not possibly have answered the question in the affirmative, if he had then been asked, if he meant by the use of this term to exclude from consideration all of the land bordering interior waters, inlets and bays, which were not more than ten miles wide from headland to headland. And yet that is what this tribunal is now asked to say that he and the other parties meant when they solemnly introduced this expression into the treaty. It is not to be imputed to him that he used the word with a covert meaning. Therefore the purpose was, as he expressed it, to determine their respective possessions along the coast, meaning by coast, the entire shores of all the bays and inlets, which Russia claimed in the Ukase of 1821, without any modification, except that in this adjustment she proposed to recede to the foot of Prince of Wales Island.

That he meant all the coast is conclusively demonstrated by his use of the word "*côte,*" in Article two of his draft:

^a U. S. C. App., 164.

^b U. S. C. App., 182.

He provides that the line,

remontera, au nord, par la passe dite le Portland Channel, jusqu'à ce qu'elle touche à la côte de la terre ferme située au 56° degré de latitude nord."^a

It is to go north until it reaches the coast of the continent.

Portland Channel appeared on the maps the negotiators had, to be much narrower, as it is in fact, than either Taku Inlet or Lynn Canal.

Mr. Canning denominated the border of the head of Portland Channel as "la côte de la terre ferme située au 56° degré de latitude nord."

In the English counterpart he said: "Shall ascend northerly along the channel called Portland Channel till it strikes the coast of the continent lying in the 56th degree of north latitude."

The border of the extreme interior part of Portland Channel was, in this Draft Convention, which he made after the negotiations had been pending for more than a year, and which had grown partly out of a claim of Russia to own the entire northwest coast of America throughout its whole extent, expressly declared to be "coast of the continent," and yet this tribunal is asked to decide that, under the same treaty, the same word "coast" is not applicable to the borders of other much wider interior waters, and that, upon a mere technical and judicial meaning attributed to the word "coast" by nations for jurisdictional purposes, the sinuous coast contemplated by the treaty was what is generally understood as a political coast line, drawn from headland to headland.

Article two proceeds:

De ce point elle suivra cette côte parallèlement à ses sinuosités, et sous ou dans la base vers la mer des montagnes qui la bordent, jusqu'au 139° degré de longitude ouest du dit méridien.

It was to follow "along that coast" and "parallel to its windings."^a

This did not mean that the line was to go straight away from "that point" southwardly along the coast of Portland Canal. Such a construction would be wholly unreasonable. It would be like marching up the hill and then down again. The line had proceeded up Portland Canal to this coast on Portland Canal, and it would do violence to common sense to suppose that he intended

^aU. S. C. App., 183.

that, it should be retraced on the land down this coast to the exterior coast. The meaning becomes absolutely clear, when we take into view the mountain range depicted on the map, which went straight away to the northwest. The line was to follow this coast, and parallel to its sinuosities, and along the seaward base of the mountains which bordered this coast, and the trend was toward the 139th degree of longitude. After having fixed unmistakably the meaning of "côte" it is clear that he intended the line to proceed, so as to follow the sinuosities of the coast so defined, that is, the coast extending around the heads of all salt waters. This was the coast demonstrated by the mountains with reference to which the entire negotiations proceeded.

In the third article he says:

Que la susdite lisière de côte sur le Continent de l'Amérique formant la limite des possessions Russes, ne doit, en aucun cas, s'étendre en largeur depuis la mer vers l'intérieur, au delà de la distance de—lieues maritimes, à quelque distance que seront les susdites montagnes.^a

Thus he defines the *lisière* as "a strip" and not as "strips" of coast. The coast is "on the continent" and not partly a fiction consisting of water. The width of the strip is not to be more than a certain distance "depuis la mer."

In determining what the coast was in respect to the water, he did not have in mind the Grand Ocean, but the word "sea" was used to designate the water bounded by what he had already designated as "coast." In this sense Portland Channel was "mer." He had defined its upper border expressly as "coast." For the same reason, other like waters constituted a part of the sea, and their borders constituted a part of the coast, and consequently the width of the "lisière de côte" was to be measured from the coast at their heads, just as the line took its initial point on the lands on the coast at the head of Portland Channel. And from these coasts the *lisière* was to be measured "vers l'intérieur."

As appears from the letter of Count Lieven to Count Nesselrode of July 13, 1824, Mr. Canning submitted his draft to Count Lieven. Count Lieven understood that the word "côte" in this draft could not have been used in the unusual and special sense now contended for, because in this letter he says that Mr. Canning makes the line

^a U. S. C. App., 183.

run, "le long de la base des montagnes qui suivent les sinuosités du rivage,"^a

He thus used the word "rivage" as equivalent to the word "côte," as used in this draft, and that fully accords with the understanding of the word "côte" from the beginning of the controversy down to that time. "Rivage" means the part of the earth which serves as a limit to any kind of body of water. It is applied indifferently to the border of a sea, or a lake, or a river. The word "rivage" is translated "coast" in the rendition of this letter by Great Britain.^b

Mr. Canning, in his letter to Sir Charles Bagot of July 24, 1824, states that he has communicated this draft to Count Lieven with the request "that His Excellency would note any points in it upon which he conceived any difficulty likely to arise or any explanation likely to be necessary." He further states that he has received the memorandum and that "there are but two points which had struck Count Lieven as susceptible of any question."^c

It is hardly necessary to say that the meaning of the word "côte" was not one of the two points which had struck Count Lieven as susceptible of any question.

It may well be imagined that, at that stage of the proceedings, Mr. Canning would have been amazed, if Count Lieven had asked him to explain what he meant by the use of the word "côte," and whether or not, he meant to confine it to such a line of coast as that to which it is now sought to be confined in the British Case.

Mr. Canning said in that letter:

The protection given by the convention to the American coasts of each power may (if it is thought necessary), be extended in terms to the coasts of the Russian Asiatic territory.

The measure of protection given by the convention to the American coasts of Russia was certainly a snare and a delusion, if it involved their dismemberment and the destruction of the commerce with the natives, in the manner that is now urged. Instead of protecting what was, as was from the first insisted, its undisputed coast, it would be transferring the sovereignty over parts of it to a nation that had never seriously set up any claim to it. The protection given to the American coasts of Russia would be quite

^a U. S. C. App., 185.

^c U. S. C. App., 187.

^b B. C. App., 90.

different from that given to the coasts of Great Britain. Great Britain unquestionably got the entire lower coast, but it is contended that Russia got only patches of coast. The Russians did make pronounced objections on three points. Indeed, Sir Charles Bagot in a letter to Mr. Canning, August 12, 1824, pronounced their differences almost, if not altogether, irreconcilable. The second objection was "as to the liberty to be granted to British subjects to navigate and trade *forever* along the coast of the *lisière* which it is proposed to cede to Russia, from the Portland Channel to the 60th degree of north latitude, and the islands adjacent."^a

He speaks of "the coast of the *lisière*." The *lisière* is the dominating feature which was to be secured. It was to be such a *lisière* as Russia had indicated would give protection, and the trade spoken of was along the coast of this *lisière*, which meant where it touched the water, and the word "coast" is used in the same sense in which he had previously used the word "rivage."

In further explanation of Russia's objection he says:

As to the second point: the Russian Plenipotentiaries declare that they are ready to grant to His Majesty's subjects for ten years, but for no longer period, the liberty to navigate and trade along the coast of the *lisière* proposed to be ceded to Russia from the Portland Channel to the 60th degree of north latitude.^b

Thus again he speaks of "trade along the coast of the *lisière*." The *lisière* was to extend from the Portland Channel to the 60th degree. This border or strip was the main security sought for, and the privilege to trade was to be given along the coast of this strip.

Sir Charles informed Mr. Canning that it was the determination of Russia, rather to leave the controversy between the two governments unsettled for an indefinite time, than to recede from their three objections specified, the second of which was the refusal to grant to British subjects the right "to navigate and trade forever along the coasts of the *lisière*."^c

Count Nesselrode, in his letter to Count Lieven of August 31, 1824, gives substantially the same account of these differences. Of

^a U. S. C. App., 190.

^c U. S. C. App., 191.

^b U. S. C. App., 190-191.

those clauses which he says it was "utterly impossible to accept" he puts, as first, the following:

1. Liberty to English subjects to hunt, to fish, and to trade with the natives of the country, perpetually, on the whole of that part of the coast which constitutes the subject of the discussion, and which extends from 59° of north latitude to 54° 40'.^a

He then speaks of Russia as having granted these very rights to the United States for ten years, and of the impossibility of discriminating in favor of Great Britain, by granting them to her perpetually. He shows plainly that by coasts he meant the whole extent of the coast where Russia's rights have been disputed. He says:

We have been willing to suppose that, in spite of a formal taking possession, a long occupation of the principal points, and a peaceful exploitation of the sources of revenue and wealth presented by the countries in question. Russia's rights of sovereignty to the fifty-first degree of north latitude might be the subject of a doubt. We have, consequently, confined them to the 54° 40', and, to prevent any new dispute from arising on this point, we have permitted one of the powers with which we were in litigation to share for ten years, on the whole extent of the coast where our rights had been disputed, the profits of hunting, fishing, and trading with the natives. We offer the same advantages to England, but to grant them forever would be to obtain the recognition of our rights of sovereignty only to abandon the exercise of them. It would be consenting to possess hereafter only in name what we now possess in fact.^b

He further says:

Russia's rights of sovereignty over the northwest coast, beginning at 59° of north latitude, have been disputed. Hence, between that degree and the parallel which would form our southern boundary, we hastened to offer special advantages to the powers with which we were in dispute. We granted to the Americans for ten years the right to fish, to hunt, and to trade with the natives of the country, and we will make the same concession in favor of the subjects of His Britannic Majesty, but it must be well understood that this concession will only comprise the space inclosed between latitude 59° and the southern boundary of our territory, to wit: latitude 54° 40', for to the north of the fifty-ninth degree His Imperial Majesty's rights of sovereignty have never been questioned, not only in no official document, but in none of the articles which the English and American newspapers have published on this subject.^c

* * * * *

Our counterdraft carries our boundary from the fifty-first degree of north latitude to 54° 40'. It leaves to the establishments which the English companies

^a U. S. C. App., 201.

^c U. S. C. App., 202-203.

^b U. S. C. App., 202.

may form hereafter on the northwest coast all the territory situated to the south of Portland Channel.^a

Can it, with even a show of plausibility be contended that he understood the word "côte" in the treaty to mean less than the whole extent, less than what had been in dispute; that it left to the absolute sovereignty of Great Britain hundreds of miles of inland coasts and surrendered the right to fish, to hunt and to trade with the natives along them? And yet it is seriously contended for Great Britain that he understood and used the word in this sense, and with this effect. The explanation in regard to the contre-projet of Russia says:

England persists in demanding from Russia the following concessions:

1. The free navigation of the bays, gulfs, etc., and *the right to fish, to hunt and to trade directly with the natives of the country forever*, on all that part of the northwest coast constituting the disputed territory, from latitude 54° 30' to 60°, subject to the restrictions mentioned in our convention of April 5 (17), with the United States concerning arms, gunpowder and spirituous liquors.^b

This designates expressly "all that part of the northwest coast constituting the disputed territory." Great Britain certainly cannot say that the treaty ever contemplated giving her any territory that was not in dispute. Here it expressly appears that Russia was to have all of the coast in dispute, and that Great Britain only sought certain rights along it.

THE FINAL NEGOTIATIONS.

Mr. G. Canning, in his letter to Mr. S. Canning of December 8, 1824, explains the status of the negotiations, and gives instructions for concluding the treaty. In the most explicit terms he sets forth the demand that Great Britain shall secure the same rights as those secured to the United States by the treaty of 1824. He says:

Russia can not mean to give to the United States of America what she withholds from us; nor to withhold from us anything that she has consented to give to the United States.^c

The uniformity of stipulations in *pari materia* gives clearness and force to both arrangements, and will establish that footing of equality between the several contracting parties which it is most desirable should exist between three powers whose interests come so nearly in contact with each other in a part of the globe in which no other power is concerned.^c

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^aU. S. C. App., 204.

^bU. S. C. App., 205.

^cU. S. C. App., 210.

Count Nesselrode himself has frankly admitted that it was natural that we should expect, and reasonable that we should receive, at the hands of Russia, equal measure, in all respects, with the United States of America.^a

The contre-projet drawn up and submitted by Mr. G. Canning set forth in Article V. almost the identical language of Art. IV. of the treaty of 1824.^b Now it is contended that he did not get for Great Britain what he said he was asking, viz., the same rights on the coast that the United States had secured, but that by the treaty of 1825, the rights of the United States were cut down, and that Great Britain, by the use of the word "coast" in the treaty, acquired exclusive sovereignty over a part of the coasts, in respect of which the United States had been granted trading privileges for ten years.

Article IV. of the treaty of 1824 appeared without any substantial variation as Article VII. in the treaty of 1825.

If the word "coast," as used in Art. III. of this draft, and in Arts. III. and IV. of the treaty as signed, meant a coast line drawn from headland to headland, then it must be admitted that it meant the same thing in Art. I. of this draft, and in the same article of the treaty of 1824 and that of 1825. It will not be asserted that one kind of a coast line was meant by the word in one article of a treaty, and that, without even a word of explanation in the negotiations, the same word had a far different meaning in other articles. What is the consequence of this contention, if "coast" means what in this controversy it is claimed to mean? In that case, by Art. I. of the treaties of 1824 and 1825, neither of the contracting parties acquired any right to resort to any coasts, not already unoccupied within the territory of the other, where such coasts were within a line drawn from headland to head, not more than ten miles apart.

They had been treating about the whole extent of this northwest coast, a most sinuous coast, full of indentations and bordered by various islands so situated, as to make a territorial coast line drawn for jurisdictional purposes, embrace large areas of islands and waters. Such a line would have excluded each contracting party, for the purpose of trading with the natives, from resorting to any of the coasts so included, though not already occupied by the other.

^a U. S. C. App., 211.

^b U. S. C. App., 217.

THE MEANING OF "COAST" IN ART. VII. OF TREATY OF 1825.

In this connection attention is called to an argument, presented in the British Case based on Art. VII. of the treaty of 1825. It proceeds as follows:

A further argument in support of the British contention can be based upon Article VII of the treaty. The liberty to frequent the inland seas, gulfs, havens, and creeks on the coast mentioned in Article III is reserved mutually by both powers. This contemplates the possibility, at least, that some of these waters may be British.^a

The statement that "this contemplates the possibility at least that some of these waters may be British," shows that it is meant to claim that Art. III. could not apply to any British waters south of $54^{\circ} 40'$, that it meant only the coast and waters north of that latitude; and that as Art. VII. contemplates a use by Russia of some British waters, consequently it must have been understood that such waters might exist under Art. III. north of $54^{\circ} 40'$. The argument concludes by saying that the article "of course only postulates that there should be some Russian waters to which it may apply. It equally postulates that there should be some British waters to which it may apply."

This is absolutely without force, in its bearing on the Fifth Question. The meaning intended is that taking Articles III. and VII. together, there can possibly be no British waters to which Art. VII. can apply, unless they be found north of $54^{\circ} 40'$, and that this being true, it follows that, to give any meaning to the reciprocity provided for in that Article, the negotiators contemplated that, in drawing the inner line of the *lisière*, some of the bays and inlets or parts of some of them, might go to Great Britain.

Article III. is not by its terms confined to the coast north of $54^{\circ} 40'$. The coast assigned to Russia is, but the Article deals with the whole northwest coast, and then particularly defines that part which is to go to Russia. It says:

The line of demarcation between the possessions of the high contracting parties upon the coast of the continent and the islands of America to the northwest shall be drawn in the manner following.

South of the line was to belong to Great Britain. Here, then, are British waters and British coasts to which Art. VII. applies, without forcing such a remote conclusion as that it must have been intended to be framed so that it might apply to waters north of $54^{\circ} 40'$.

^aB. C., 76.

CONCLUSION OF THE NEGOTIATIONS.

The treaty was concluded without any further exposition between the parties as to the points of difference. In his letter to Mr. G. Canning of February 17, 1825, transmitting the treaty, Mr. S. Canning shows clearly his understanding of the effect of the line which was to be drawn parallel to the coast. He understood that the line was drawn, not on territorial waters, but on land. He says:

The line of demarcation along the strip of land on the northwest coast of America assigned to Russia is laid down in the convention agreeably to your directions, notwithstanding some difficulties raised on this point, as well as on that which regards the order of the articles, by the Russian plenipotentiaries. ^a

He says "strip of land" and not "strips of land and water."

Mr. Middleton, on that very day, had an interview with Mr. Canning which he recorded in a letter to Mr. Adams. This contemporaneous record of the views of Mr. Canning ought to have weight. In the first place it is not contradictory of, but entirely consistent with, all that had gone before. If Mr. Middleton had been capable of making a self-serving record for his country, no such motive could possibly have then existed. He says:

I have the honor to acquaint you that a convention was signed yesterday between the Russian and British plenipotentiaries relative to navigation, fisheries, and commerce in the Great Ocean, and to territorial demarcation upon the Northwest Coast of America. In a conversation held this day with Mr. Stratford Canning I have learned that this treaty is modeled in a great degree upon that which was signed by me in the month of April last, and that its provisions are as follows, to wit:

The freedom of navigation and fishery throughout the Great Ocean and upon all its coasts; the privilege of landing at all unoccupied points; that of trading with the natives, and the special privileges of reciprocal trade and navigation secured for ten years upon the northwest coast of America, together with the mutual restrictions prohibiting the trading in fire-arms or spirituous liquors, are all stipulated in the British as in the American Treaty, and some new provisions are made for the privilege of refitting vessels in the respective ports, and no higher duties are to be imposed than upon National Vessels. ^b

He understood that by unoccupied "coasts" was meant all the coasts:

Count Nesselrode, in writing to Count Lieven February 20, 1825, communicating the fact that the treaty had been signed, said:

The only point that has given rise to any difficulties in our discussions with the British plenipotentiary related to the limits of the strip of coast which Russia is to

^aU. S. C. App., 223.

^bU. S. C. App., 224.

possess on the American continent from the fifty-sixth degree of north latitude to the point of intersection of the one hundred and forty-first degree of west longitude.

The Emperor would have found it more mutually just, more equally advantageous, if the natural frontier formed by the mountains bordering on the coast were adopted by both parties as the invariable line of demarcation. England would have gained thereby wherever those mountains were less than ten marine leagues from the sea; Russia wherever that distance was greater, and, in view of the want of accuracy of the geographical notions which we possess as to these countries, such an arrangement would have offered an entire equality of favorable chances to the two contracting parties. ^a

Can it be imagined that when he was contending for an unvarying mountain boundary for the "limits of the strip of coast which Russia is to possess," he understood that he had receded so far as to take stretches of water as such boundary, had given up a continuous strip for broken strips, and had abandoned the sovereignty of Russia over hundreds of miles of coast, over which she had always asserted her claim; and that all of this occurred without any discussion or explanation, and without even the private correspondence of either government giving the remotest hint of it? The idea is on its face incredible. To hold that such was the effect of the use of the word "coast" is to convict the plenipotentiaries of Great Britain of the most artful and veiled duplicity imaginable, or those of Russia of a lack of intelligence that is incomprehensible.

It would not be possible for any one to give a clearer and more forcible exposition of what Russia, Great Britain and the United States understood by the "northwest coast" and "the coast,"—as to which the jurisdiction of these respective powers was settled by the treaties of 1824 and 1825,—than that given by the distinguished counsel for Great Britain in the Fur Seal Arbitration.

Sir Charles Russell discussed the question at great length. He said that the phrase northwest coast of America "extended to the whole of the coast line of the possessions claimed by Russia from Behring Strait down to its most southern boundary."^b He quoted from the Ukase as follows:

The pursuits of commerce, whaling and fishery, and of all other industry on all islands, ports and gulfs, including the whole of the northwest coast of America, beginning from Behrings Strait to the 51st degree of northern latitude: also from

^a U. S. C. App., 225-226.

^b Fur Seal Arbitration, Vol. 13, p. 128.

the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behrings Straits to the south cape of the Island of Urup, namely, to the 45° 50' northern latitude, is exclusively granted to Russian subjects.

and then added:

Again, the Tribunal will see that the whole line of that coast is indicated by the general description of Russian assertion of dominion. *a*

In discussing the treaty of 1824 and the rights secured by the United States under Article IV of that Treaty, he says:

There it is stated without any qualification whatever; and this is written, as I say, six days after the Treaty; it extends without any qualification the whole way up; and the importance of Article four is that it gives a temporary advantage to the United States—that is to say, it gives to United States subjects rights of access to interior seas, to gulfs, to harbors, and to creeks, all of which, or the greater part of which, would be in strictly territorial waters; and, therefore, to which, upon the general rule of international law, the United States would not have any right of access at all. *b*

Thus he shows that the United States and Russia, in treating in regard to the northwest coast which had been claimed by Russia, meant by “coast” the shores of interior seas, gulfs, harbors and creeks, “all of which or the greater part of which would be in strictly territorial waters.”

It is the coast of these waters that Great Britain now seeks to exclude from the meaning of the word “côte” in the treaty of 1825, and on the ground that they embrace strictly territorial waters. This is urged as to a treaty in which, for the purpose of getting the same rights as the United States got in respect of such inland waters, Great Britain insisted upon inserting Article IV of the treaty of 1824, adopted almost word for word. This treaty of 1824, as above expounded by Lord Russell, gave to the United States for ten years rights in strictly territorial waters along the northwest coast, rights corresponding to which Great Britain demanded for herself, but which under the present contention she got as to some of those waters exclusively and forever as against both Russia and the United States.

When Sir Charles Russell comes to speak of the right secured to Great

a Fur Seal Arbitration, Vol. 13, 130.

b Fur Seal Arbitration, Vol. 13, 142.

Britain under the treaty of 1825, he sets out Article VII, which is identical with Article IV of the treaty of 1824, and adds:

Therefore under that Article there is for a limited period of time a right given (even as to waters which would be according to law territorial waters) of user of such waters, and that extends along the whole of the coast mentioned in Article III.^a

This is the very coast now in dispute.

Referring to these two treaties, Sir Richard Webster said:

It is my contention that Great Britain intended to get, so far as coast rights were concerned, and so far as navigation and fishing rights were concerned, what the United States got.^b

In speaking of Article IV. of the treaty of 1824, he says:

It was something which would apply to what may be called interior seas and waters of the territory in future to be recognized as Russian as distinguished from the United States.^c

In discussing Article VII. of the treaty of 1825 in connection with Article IV. of the treaty of 1824, he said that the coast mentioned in Article III. of the treaty of 1825 was "the whole of the coast up to Behring Straits."^d

He further said in the same connection:

I submit (remembering that the line of demarcation was to be complete with reference to the coast referred to as the northwest coast of the continent, and the Islands of America to the northwest), that nobody who can take an impartial view of this matter can come to any other conclusion than that the coast referred to in article VII is the whole coast; and when we remember that in the United States the expression *lisière* does not occur at all, and that Article III of the United States treaty speaks of the northwest coast of America north of 54° 40', and that I am justified in saying that Mr. George Canning believed that he was getting the same for Great Britain as the United States had got from Russia—there is not any answer, at any rate, apparent (unless I have made some grave blunder) to the contention that the right of Great Britain to visit, during ten years, inland creeks, and harbours, and to visit for the purpose of navigation and fishing the seas which washed the American coasts extended right of way from 54° 40' up to the point to which I have called attention.^e

How could Mr. Canning have thought that he was getting the same rights that the United States got if the present contention of Great Britain is sound? If it be sound, then he builded wiser than he knew,

^a Fur Seal Arbitration, Vol. 13, 167.

^d Fur Seal Arbitration, Vol. 13, 451.

^b Fur Seal Arbitration, Vol. 13, 440.

^c Fur Seal Arbitration, Vol. 13, 451-452.

^e Fur Seal Arbitration, Vol. 13, 444.

but to say that, is to say that the treaty means something different from what he thought it meant.

The Treaty was made to express the understanding at that time of the parties, and no construction can be put upon it which starts out with a predicate that Mr. Canning did not understand it.

Referring to the rights claimed by Russia under the Ukase of 1821 and to the monopoly granted to the Russian Company in the year 1829 after the treaty, Sir Richard Webster said:

In 1799, it was down to the 55°; and, in 1821, it was down to 51° in terms; and, in 1829, it is the whole area assigned to Russia. It must have been, and was, the whole North West Coast of America above 54° 40', which was the part exclusively assigned to Russia, as compared to that below, which was exclusively assigned to the United States. Observe that 54° 40' was to be the dividing line, etc."

LA CRÊTE DES MONTAGNES.

THE CONTENTION OF THE UNITED STATES IS, THAT THE NEGOTIATORS DID NOT MEAN "THE MOUNTAINS NEXT THE SEA," NOR ANY OF THE MOUNTAINS CONTEDED FOR BY GREAT BRITAIN, BUT MOUNTAINS OTHER THAN THOSE, CONSTITUTING A CHAIN SEPARATED FROM THE SEA BY INTERVENING MOUNTAINS, WHICH THEY INTENTIONALLY REJECTED; AND THAT THEY DID NOT CONTEMPLATE INDIVIDUAL MOUNTAINS WHOSE SUMMITS WERE TO BE CONNECTED TOGETHER, OR EVEN SHORT RANGES HAVING A TREND ACROSS THE LINE OF COAST OF SUCH WATERS AS TAKU INLET AND LYNN CANAL, BUT A GENERALLY CONTINUOUS RANGE OF MOUNTAINS SUPPOSED TO BEGIN NEAR THE HEAD OF PORTLAND CANAL, AND TO CONTINUE WITH A GENERAL TREND PARALLEL WITH THE COAST, AROUND THE HEAD OF LYNN CANAL; AND THAT THE ASSUMPTION OF THE EXISTENCE OF SUCH A RANGE, AND THE AGREEMENT IN REFERENCE TO IT, WAS SUBORDINATE TO, AND IN HARMONY WITH, THE FUNDAMENTAL POSTULATE THAT "CÔTE" MEANT ALL OF WHAT COULD BE INCLUDED BY THAT TERM, AND NOT ANYTHING LESS, TO WIT: ALL OF THE NORTHWEST COAST OF AMERICA NORTH OF 55° 40' OVER WHICH RUSSIA HAD CLAIMED JURISDICTION.

The discussion of the mountains contemplated by the treaty is necessarily involved in a consideration of the Fifth Question, and carries with it an answer to the Seventh Question.

It is said in the British Case that, the description of the mountains in the Treaty, which are situated parallel to the coast, "indicates a general parallelism only. Mountains being a natural feature could not, of course, be expected to run uniformly parallel to the coast, whether straight or winding."^b

^a Fur Seal Arbitration, Vol. 13, 463.

^b B. C., p. 80.

This proposition is assented to, and it is agreed that the mountains which the negotiators contemplated, extended in a general direction parallel with the coast, and that they did not contemplate a crest of mountains, winding in and out, along the sinuosities of the coast. There is a difference between the description of the mountains, and the description of the line in reference to the coast, in case the mountains fail. They contracted with reference to a crest of mountains generally parallel to the coast, but if the mountains should fail, then the line was to be drawn parallel to the sinuosities of the coast.

The British Case gives a very deft, but palpably unfair turn to this. Referring to the mountains it says:

In this they differ from the arbitrary 10-league line which, especially as it would only fall to be drawn through a country where mountains failed, might be drawn with substantial accuracy parallel to the general line of the coast.^a

It is a forced construction to say that the treaty only contemplated that the line should be drawn on the ten-league basis "through a country where mountains fail." The Treaty provided that, if the crest of the mountains, with reference to which they contracted, and which extended apparently in a direction parallel to the coast, should, at any place, be at a greater distance than ten marine leagues from the ocean, the line should be drawn parallel to the sinuosities of the coast. There was no provision that this line should not be drawn through a mountainous country. There is every reason to believe that the negotiators knew that the whole country was mountainous, and that, if the crest of the mountains which they had in view should be further from the coast than ten marine leagues, the line would nevertheless be drawn through a country where mountains did not fail. It was not to be drawn "parallel to the general line of the coast," but *parallel to the sinuosities of the coast*.

The British Case proceeds to say that:

* * * the mountains in question might vary in distance from the coast, from its very edge to the extreme limit of the 10 marine leagues, without sacrificing their general parallel character.^a

It might have been added that it was contemplated that the mountains in question might *exceed* the extreme limit of ten marine leagues from the coast.

^a B. C., 80.

There is nothing in this, however, to justify any assumption that the individuality of the crest of mountains they had in view is to be ignored, or that any mountains, however haphazard they might be, answer to what the negotiators contemplated, provided only they are within ten marine leagues from the coast. It is further observed upon the same page that the mountains were not to be unbroken, and that this is made clear from the circumstance that the line was to be crossed by rivers. The fact that the treaty contemplated that the mountains were to be crossed by rivers, and expressly provided for their navigation across the boundary to the ocean, does not justify the conclusion that such a particularized character of breaks in the mountains includes breaks six and ten miles wide, not made by rivers, but by inlets and bays which were not specified. Under the general rule of construction that the specification of one is the exclusion of others, such an argument is wholly inadmissible.

In the British Case it is said that:

According to the British contention, the phrase "la crête des montagnes" signifies the tops of the mountains adjacent to the sea. It was introduced as a concession from the line along the base of this slope proposed by Mr. Canning.^a

Again it says:

The mountains were to be the mountains next the sea.^a

No authority in support of this claim is to be found in the negotiations.

THE MAPS ACCESSIBLE TO THE NEGOTIATORS SHOWED A WELL DEFINED MOUNTAIN CHAIN TO THE INTERIOR OF THE MOUNTAINS NEXT TO THE SEA, AND CORRESPONDING TO THE LANGUAGE OF THE TREATY.

It is known that the negotiators had Faden's map of 1823, the map of 1802 published by the Russian Quarter-Master General's Department, probably Vancouver's charts (a Russian, English or French edition), one or more maps by Arrowsmith, and possibly the Langsdorf map of 1803-1805.^b

It is asserted in the British Case, but is not proven and therefore is not admitted in the Case of the United States, that Vancouver's Narrative was read by the negotiators.^c

^a B. C., 81.

^b U. S. C. C., 7-8.

^c U. S. C. C., 8.

Faden's map^a shows a well defined, continuous crest of mountains which, from the south passes a short distance to the northeast of the head of Portland Canal, and continues generally parallel with the coast, turning around the head of Lynn Canal and nearly uniting with another range of which Mount Fairweather and Mount St. Elias are parts. Between this range of mountains and the coast of the bays and inlets all along, other mountains are shown much nearer the coast, and in some places almost reaching it, but they do not form any range whatever trending generally parallel with the coast, but are depicted either as short mountain formations trending toward the coast, or as spurs.

If the negotiators saw this map they were impressed with the idea that, there was a generally continuous, and homogeneous range of mountains, forming one system, extending from near the head of Portland Canal all the way up to Mount St. Elias. They were also impressed with the fact that between this range and the coast, there were other mountains, very much nearer the coast, which constituted no part of the crest of this range of mountains, and which, if they belonged to the system at all, were foothills, or offshoots of it, with a general formation nearly at right angles to the trend of the crest.

If they examined the Russian map of 1802^b they would have been impressed in the same way as by Faden's map, with the difference that the slopes of the mountains, the crest of which extends from Portland Canal around Lynn Canal, parallel with the general trend of the coast of the interior waters, allowing exceptions for some short arms which make out almost at right angles from such coast, reach down to the very shore itself, and do not present separate or short mountains, either independent of, or running at right angles to the range, as shown on Faden's map.

If they consulted Arrowsmith's map of 1818^c they got an impression of a crest of a homogenous range, just like that given in the other two maps, and, at places, would have been impressed with the fact that, there were lateral, or independent mountains, between this general range and some portions of the coast.

If they consulted Arrowsmith's map of 1822,^d they were not im-

^a British Atlas, No. 10.

^c U. S. Atlas, No. 8.

^b U. S. Atlas, No. 6.

^d U. S. Atlas, No. 10.

pressed with the idea that there were any mountains at all between the head of Portland Canal, and the head of Lynn Canal.

Arrowsmith's map of the same year as reproduced in the British Atlas (No. 8) shows a very faint indication of mountains. The same map uncolored^a is a little more pronounced, but shows nothing like a continuous crest of mountains. There appear to be mountains extending in a general direction, just as in the other map, but they are very much broken up.

Langsdorf's map^b is so vague, and inaccurate, that it cannot be supposed that it was relied on for any purpose, when other maps, so much superior, were at hand.

Vancouver's maps show a continuous mountain range, or chain, from northeast of the head of Portland Canal all the way around the head of Lynn Canal. Between this dominant range, or chain, which is much higher than any of the other mountains depicted, and the coast, the whole country is shown to be mountainous down to the very water, and all along the coast. This is much more pronounced in the map showing the territory from Portland Canal to Prince Frederick Sound, than on the map showing the territory from Prince Frederick Sound north.^c

In Map No. 1 of the British Atlas the general range is shown and along a large part of the coast north of Portland Canal mountain formations are shown extending down to the very water, which appear to be independent of the general range.

In Map No. 2 of the British Atlas, the mountainous character of the country to the seaward of this general range, and north of Portland Canal, is shown with very great distinctness. All the way up to 57° 30' north latitude the mountains extend down to the water.

In Map No. 3 of the British Atlas, which is a duplication of Map No. 2, from 56° to 57° 30', not showing, however the coast between 56° and about 57° 10', the mountains between the general range and the coast, are not so numerous, but they distinctly appear.

On part of Vancouver's No. 7, which appears as Map 4 of the British Atlas, there is a marked distinction between the dominant chain and the mountains near the water's edge, and those at the

^a British Atlas, No. 9.

^b British Atlas, No. 7.

^c U. S. Atlas, Nos. 4 and 5.

water's edge are more pronounced than the sea of mountains intervening between them, and the crest of the dominant chain.

It would have been impossible for these maps to be examined without getting three distinct impressions:

1. That there was a general, continuous, dominant range of mountains, individualized and distinct from all other mountains shown.

2. That this range of mountains, except near the heads of some of the inlets, was approximately ten marine leagues from, and parallel to the general trend of the sea waters in that vicinity.

3. That this trend followed the general line of the coast of the continent as far as the head of Lynn Canal, that it turned, still following the coast of Lynn Canal, and thence proceeded northwardly following the general line of the continental coast.

This was the picture they had before them. The coast which they were proposing to divide along the parallel of $54^{\circ} 40'$ was all of the northwest coast of America, and Russia was to have all the coast north of $54^{\circ} 40'$.

If the negotiators read Vancouver's Narrative, which is not admitted by the United States, the narrative not being put in as evidence or relied on by the United States, the impressions made by the maps as to the mountainous character of the country from the very water's edge would have been confirmed. (See appendix to this argument, Title "Extracts from Vancouver's Narrative.")

What the maps sufficiently showed as to the mountainous character of the country, along the coast and in the interior, between Portland Channel and Stikine River, and Stikine River and Taku Inlet, and between Taku Inlet and Lynn Canal, without the narrative of Vancouver, is confirmed by subsequent explorations, and it may confidently be affirmed that the negotiators, desiring to give certainty to the boundary line, spoke according to what the maps showed, when they designated a line to be drawn from the point where it would strike the 56th degree, along the crest of the mountains situated parallel to the coast, and that where the crest of these mountains, which extend in a direction parallel to the coast, from the 56th degree of latitude to an intersection with the 141st degree of longitude, should be at a distance of more than ten marine leagues from the ocean, they should no longer serve as a boundary.

They saw that there were mountains shown along the coast, and that there were other mountains between those rising up from the water line, and the mountains depicted as a continuous chain from the northeast of the head of Portland Canal around the head of Lynn Canal.

It also appeared that along these seaward mountains there was not any crest of mountains parallel to the coast from Portland Canal to the 141° of longitude. They described a particular crest of mountains that was in their mind's eye, for they said:

“Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte,” etc.

It was on the divergence of these particular mountains more than ten marine leagues from the ocean, that the line was to be fixed by distance. The negotiators contemplated that these mountains might be more than ten marine leagues from the coast, a hypothesis which could not have been possible in respect of the irregular mountains shown to be along almost the entire coast, down to the very water's edge. In further demonstration of what mountains they meant, the reason for referring the boundary line to the mountains must be considered. It had previously been understood that wherever the dividing line of the coast to be agreed on, should strike the coast, all of the coast to the north of that line was to belong to Russia, and it was understood by the negotiators that this was to be a strip on the continent for the protection of Russian establishments from encroachments by the subjects of Great Britain from the interior. The mountains, therefore, were not a primary, but a secondary consideration. They were a subsidiary and not a dominant feature of the Treaty. They were to strengthen and not to weaken. They were introduced to more certainly define the *lisière* and not as a factor to disintegrate and destroy it. The mountains were not invoked by the Russians to be a Frankenstein, to destroy that which had been already conceded, and which they were called on to protect.

THE CHARACTER AND IDENTITY OF THE MOUNTAINS AS SHOWN BY THE NEGOTIATIONS AND THE TREATY.

Let us see how the question as to mountains arose, progressed and culminated. Mr. Canning, in his instructions to Sir C. Bagot of Jany. 15, 1824, said:

If your excellency can obtain the strait which separates the islands from the mainland as the boundary, the prolongation of the line drawn through that strait would strike the mainland near Mount Elias—the lowest point of unquestioned Russian discovery. But if that were too much to insist upon, the one hundred and thirty-fifth degree of longitude, as suggested by your excellency, northward from the head of Lynns Harbor, might suffice.

It would, however, in that case be expedient to assign, with respect to the mainland southward of that point, a limit, say, of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward. We must not on any account admit the Russian territory to extend at any point to the Rocky Mountains.^a

Thus he expected Russia to have a substantial strip of land on the continent. In this he followed the suggestion of the Hudson's Bay Company.^b

The earlier propositions of Sir Charles Bagot made no reference whatever to mountains. Their first introduction was in the Russian counterdraft as follows:

To complete the line of demarcation and render it as distinct as possible, the plenipotentiaries of Russia have expressed the desire to make it follow Portland Channel up to the mountains which border the coast.

From this point the boundary would ascend along those mountains, parallel to the sinuosities of the coast, as far as the one hundred and thirty-ninth degree of longitude (meridian of London), the line of which degree, prolonged northward, would form the ulterior limit between the Russian and English possessions, to the north as well as to the east.^c

This language is a clear demonstration as to the mountains had in view:

1st. They were "to complete the line of demarcation and render it as distinct as possible."

2nd. The line was "to follow Portland Channel up to the mountains."

3rd. It was to ascend along the mountains parallel to the sinuosities of the coast.

^a U. S. C. App., 148.

^c U. S. C. App., 158.

^b U. S. C. App., 150.

This showed the direction the line was expected to take, to attain the mountains referred to, and that it was to be prolonged in the same direction up to the mountains. To reach the mountains proposed by Great Britain the line runs almost at right angles to this. The British proposal does not complete the line of demarcation and render it as distinct as possible. On the contrary, it constantly disrupts the line and is so uncertain that it depends for the identification of mountains fulfilling the terms of the treaty, upon the most labored, intricate and elusive demonstration.

The only mountains on the map that in any way fill these conditions, are those which are depicted as a continuous chain extending from the northeast of the head of Portland Canal, parallel with the coast, around Taku Inlet and Lynn Canal, to the 139th degree of longitude. The language exactly describes the picture shown by the maps, the word "sinuosities" being used to denote a general and not a minute conformation. It was a most attractive and natural boundary, and this is a persuasive argument in favor of the conclusion that it alone was meant.

The reason given by the Russian plenipotentiaries for running the line along the mountains appears in the succeeding paragraph of the *contre-projet* as follows:

The principal motive which constrains Russia to insist upon sovereignty over the above-indicated *lisière* (strip of territory) upon the mainland (*terre ferme*) from Portland Channel to the point of intersection of 60° latitude with 139° longitude is that, deprived of this territory, the Russian-American Company would have no means of sustaining its establishments, which would therefore be without any support (*point d'appui*) and could have no solidity.^a

That Sir Charles Bagot understood exactly what the Russian negotiators had in mind in referring to the mountains is plain, for, in his amended proposal, he says:

Since it has been decided to take as a basis of negotiation the mutual advantage of the two countries, it should be noted, in answer to the proposal made by the Russian plenipotentiaries, that a line of demarcation drawn from the southern extremity of Prince of Wales Island to the mouth of Portland Channel, thence up the middle of this channel until it touches the mainland (*terre ferme*), thence to the mountains bordering the coast, and thence along the mountains as far as the 139° degree longitude, etc.^b

^a U. S. C. App., 158.

^b U. S. C. App., 159.

He manifestly looked at the map and saw the mountains proposed by Russia which would be reached by a line that would follow Portland Channel up to the mountains which border the coast, "and thence would proceed as far as 139° longitude." He made no objection to the particular mountains clearly indicated, but in his amended proposal ignored the suggestion of Russia as to the mountains and proposed to run the line "parallel with the sinuosities of the coast, and always at a distance of ten marine leagues from the shore."^a In their observations upon his amended proposal, the Russian plenipotentiaries set forth distinctly their reasons for a mountain boundary as follows:

The motive which caused the adoption of the principle of mutual expediency to be proposed, and the most important advantage of this principle, is to prevent the respective establishments on the northwest coast from injuring each other and entering into collision.

The English establishments of the Hudson's Bay and Northwest companies have a tendency to advance westward along the 53° and 54° of north latitude.

The Russian establishments of the American Company have a tendency to descend southward toward the fifty-fifth parallel and beyond, for it should be noted that, if the American Company has not yet made permanent establishments on the mathematical line of the fifty-fifth degree, it is nevertheless true that, by virtue of its privilege of 1799, against which privilege no power has ever protested, it is exploiting the hunting and the fishing in these regions, and that it regularly occupies the islands and the neighboring coasts during the season which allows it to send its hunters and fishermen there.

It was, then, to the mutual advantage of the two Empires to assign just limits to this advance on both sides, which, in time, could not fail to cause most unfortunate complications.

It was also to their mutual advantage to fix these limits according to natural partitions, which always constitute the most distinct and certain frontiers.

For these reasons the plenipotentiaries of Russia have proposed as limits upon the coast of the continent, to the south, Portland Channel, the head of which lies about (par) the fifty-sixth degree of north latitude, and to the east the chain of mountains which follows at a very short distance the sinuosities of the coast.^b

Thus they wanted a natural partition, and distinct and certain frontiers. For this reason they proposed Portland Channel, a body of water doubtless supposed to be sufficiently certain, whose head was known to end about the 56°, as the limit to the south (using the term in a general sense and not to give the direction with exactness), and

^a U. S. C. App., 159.

^b U. S. C. App., 161.

“to the east the chain of mountains which follows at a very short distance the sinuosities of the coast.”

Here, then, is a still more accurate designation of the mountains had in view. It had already been indicated that the line running up Portland Channel was to be carried on up to the mountains which were meant. Here is a further specification. It was a “chain of mountains which follows at a very short distance the sinuosities of the coast.”

This chain was to be the boundary on the east. Could anyone propose a general southern boundary with a fixed termination, and then describe from that point a general eastern boundary, fixed by a chain of mountains as a natural monument, and expect that in drawing the eastern boundary the line would run almost west to reach distant mountains instead of starting north along the nearest mountains for such eastern boundary, and this, too, with nothing to show that such a remarkable method was to be pursued?

How much less is such a hypothesis to be accepted when it is shown that, whether it actually existed or not, the mountains referred to had for the negotiators and to their minds a location on an eastern line, beginning approximately at the point which had been fixed as the termination of the southern line. The inquiry is whether or not they could have meant the mountains now claimed by Great Britain as the line. It can be shown that they did not mean them, if it be shown that they meant other mountains situated in a different place and with characteristics essentially different, so far as their relation to the main, and accepted theory of the treaty, was concerned. If they contracted with reference to mountains, supposed to exist at a certain locality, and if they attributed to these ideal mountains characteristics which were essential, and controlling considerations in their selection, then if on inquiry they do not exist, other mountains totally different in these respects can not be substituted for them. If these other mountains are located far from the vicinity where the ideal mountains were supposed to exist, if they are not such mountains as were contemplated, if they bring about a result in conflict with that sought to be attained, by an agreement made with reference to the ideal mountains, then upon what principle of reason or justice can it be claimed that they should be so substituted?

If the line, to reach them must run, a great many miles from where

it would have run, to reach the ideal mountains, if, instead of being a chain such as these ideal mountains were supposed to be, they are sporadic, disconnected peaks, or even formations of some extent, with some semblance of continuity, if, instead of forming a generally uniform barrier, which was continued around, and generally parallel with all of the coast, they, except for comparatively short stretches, are discontinued, and, instead of being parallel to, are perpendicular to large extents of the coast, then merely because they are mountains, and the other mountains do not exist, they cannot be substituted for them.

The negotiations were broken off without anything further being said as to the mountains.

In a letter of April 11, 1824, to Mordvinof, Count Nesselrode makes plain what character of protection Russia demanded. He said:

For this only one expedient presents itself: to establish at some distance from the coast a frontier-line which shall not be infringed by our establishments and trappers, as also by the hunters of the Hudson's Bay Company. The Plenipotentiaries on both sides equally recognized the necessity of this measure; but the width of the coast-line necessary for the safe existence and consolidation of our Colonies, the direction of the frontier, and even its starting point on the Continent of America, still form subjects of negotiation, and the British Ambassador has declared that for continuing them he must seek new instructions from his Court. I shall not repeat that in these negotiations with England we took, and will continue to take, into equal consideration on the one side the requirements and interests of the establishments of the Russian-American Company, and, on the other, the degree of its rights of possession in the interior of the Continent of America, and the measure of the methods for firmly securing to the Company the possession of these territories.

As I have said above, for the peaceful existence of our Colonies more than all is it necessary to determine with accuracy the frontier, the extent of the country between the coast, and this frontier must be sufficient and be in correspondence with the condition to what these establishments will, in all probability, in time attain, and be their means of own defence. ^a

He says, it is necessary to determine the frontier with accuracy, and that it must be a sufficient defence not only for present, but for *future* establishments.

We now advance the next step, as shown by the record, toward a definite designation as to what the Russians had in view in their proposal as to the mountains, and how Mr. Canning understood it.

^a U. S. C. App., 167.

On May 20, 1824, in a letter from Count Lieven to Count Nesselrode, he said:

Your excellency will notice by Mr. Canning's dispatch that the English Government agrees to accept the terms last proposed by our court, and that Sir Charles Bagot is about to receive authority to sign, upon these bases, the convention which will permanently settle the state of our frontiers in America. The conditions placed at the discretion of the British ambassador on this point will probably not appear to the imperial ministry of a nature to diminish the value of this concession.

They consist:

(a) Of a more definite description of the limits within which the portion of territory obtained by Russia on the continent is to be inclosed.

The proposition of our court was to make this frontier run along the mountains which follow the windings of the coast to Mount Elias. The English Government fully accepts this line as it is laid off on the maps; but, as it thinks that the maps are defective and that the mountains which are to serve as a frontier might, by leaving the coast beyond the line designated, inclose a considerable extent of territory, it wishes the line claimed by us to be described with more exactness, so as not to cede, in reality, more than our court asks and more than England is disposed to grant.^a

The English government agreed to accept the terms last proposed by Russia. These terms were, in order to render the line as distinct as possible, to make it "follow Portland Channel up to the mountains, which border the coast," and thence to "ascend along those mountains parallel to the sinuosities of the coast, as far as the one hundred and thirty-ninth degree of longitude."^b

They had explained in their observations that they meant by mountains, "the chain of mountains which follows at a very short distance the sinuosities of the coast." Therefore the English Government understood it was a chain of mountains, and that it followed the windings of the coast. It has been shown that by coast they all understood the coast claimed by Russia, the whole extent of the northwest coast, north of 54° 40'. It was a particular chain which was to fix the "line as it is laid off on the maps." The chain as laid down on the maps meets all of the conditions had in view. There is only one chain shown.^c

This chain runs generally parallel to the sinuosities of the coast, as they understand that word. It formed a complete and continuous natural barrier, except where there might be passes or rivers. Can

^aU. S. C. App., 178.

^bU. S. C. App., 158.

^cU. S. C. App., 161.

there be a doubt that these are the mountains, and that they were understood to run to the interior of the heads of all bays and inlets? Can it be said that the negotiators meant any mountains in the region of the coast although they did not form a chain, mountains that ran perpendicular to any of the coast, mountains that did not form a substantially continuous barrier?

They knew that there were mountain cliffs depicted as rising right up from the coast, that there appeared a mountain elevation, and mountain peaks far to the seaward of this supposed chain. They knew that this chain did not purport to represent any such mountains. Then how can it be said that they contracted with reference to such mountains, or that, if what they contracted with reference to does not exist, we must perforce go to what does exist, although it is plain that they did not contract with reference to it, and although it would bring about a result essentially irreconcilable with what they had in mind, which in its essential feature that Russia should get all of the coast, was already understood and agreed to?

The mountains were a mere incident. They were to serve as a convenience to give security and definiteness to what was fully agreed to. Misled by maps they thought that these mountains would serve their purpose. They never intended them to defeat it, and they never contracted in reference to any mountains that could defeat it. The fact that they contracted with reference to these mountains, which ran around all of the coasts, is, whether such mountains existed or not, a proof of the contention that by coast they meant that coast running around all interior waters, and that the line was to be drawn parallel to the sinuosities of such coast.

This is made clear by the objection made by Mr. Canning. He thought the maps defective, and that "the mountains which are to serve as a frontier might by leaving the coast beyond the line designated, inclose a considerable extent of territory," and more than was intended. The mountains were those shown on the maps running around all the coast, but they might leave "the coast beyond the line designated," that is on the maps, and so he wanted to guard against it. He then sought to make a change to the seaward base of the mountains. In his letter to Sir C. Bagot of July 12, 1824, he said:

After full consideration of the motives which are alleged by the Russian Government for adhering to their last propositions respecting the line of demarcation to

be drawn between British and Russian occupancy on the northwest coast of America, and of the comparative inconvenience of admitting some relaxation in the terms of your excellency's last instructions, or of having the question between the two governments unsettled for an indefinite time, His Majesty's Government have resolved to authorize your excellency to consent to include the south points of Prince of Wales Island within the Russian frontiers, and to take as the line of demarcation, a line drawn from the southernmost point of Prince of Wales Island from south to north through Portland Channel, till it strikes the mainland in latitude 56; thence following the sinuosities of the coast, along the base of the mountains nearest the sea to Mount Elias, and thence along the one hundred and thirty-ninth degree of longitude to the Polar Sea.^a

The line is still to follow "the sinuosities of the coast" from where, drawn through Portland Channel, it strikes the mainland in latitude 56; but "along the base of the mountains nearest the sea." He does not speak of a mountain chain, but of mountains and the "base of the mountains nearest the sea." If this means the mountains nearest the sea and not the base nearest the sea, then these mountains were not the chain referred to by Russia. They could not be, for Vancouver showed in his maps and his narrative that there were mountains to the seaward of this chain. The mountains were not to run parallel to the coast. The line was to be drawn "following the sinuosities of the coast, along the base of the mountains." There is nothing to show that he ever intended to depart from the hitherto accepted meaning of the word coast. This line would, if he meant the mountains nearest the sea, have been drawn practically right at the coast, and all of the way around, and the lisière would have been a mere fringe with no substantial footing. But he further says:

In fixing the course of the eastern boundary of the strip of land to be occupied by Russia on the coast, the seaward base of the mountains is assumed as that limit, but we have experience that other mountains on the other side of the American continent, which have been assumed in former treaties as lines of boundary, are incorrectly laid down in the maps, and this inaccuracy has given rise to very troublesome discussions. It is, therefore, necessary that some other security should be taken that the line of demarcation to be drawn parallel with the coast, as far as Mount St. Elias, is not carried too far inland.

This is done by a proviso that that line should in no case (*i. e.*, not in that of the mountains, which appear by the map almost to border the coast, turning out to be far removed from it), be carried further to the east than a specified number of leagues from the sea. The utmost extent which His Majesty's Government would be disposed to concede would be a distance of ten leagues, but it would be desirable if your excellency were enabled to obtain a still more narrow limitation.^a

^a U. S. C. App., 181.

This more specific instruction shows that he probably had not meant in the first part of the letter to suggest different mountains from those before considered, but that he probably meant the seaward base of the chain depicted, and not the base of those broken mountains nearest the sea. His reference to the map shows that he must have referred to this chain. He was not seeking to get nearer the coast or to obtain any part of the coast, but to guard against going too far into the interior. He feared that "the line of demarcation to be drawn parallel with the coast" if drawn on those mountains, which, as shown on the maps, satisfied the condition as to parallelism to the coast, might on account of the mistake in location, be further from the coast than they appeared. He wanted other security, and provided that "the line should in no case (*i. e.*, not in that of the mountains, which appear by the map almost to border the coast, turning out to be far removed from it) be carried further to the east than a specified number of leagues from the sea." He referred to the chain of mountains which Russia meant and said that these mountains appeared almost to border the coast. He shows that he was willing to give, if necessary, a *lisière* ten leagues wide. His draft convention shows the kind of mountains he meant. It says:

* * * the line of frontier between the British and Russian possessions shall ascend northerly along the channel called Portland Channel, till it strikes the coast of the continent lying in the 56th degree of north latitude. From this point it shall be carried along that coast in a direction parallel to its windings, and at or within the seaward base of the mountains by which it is bounded, as far as the 139th degree of longitude west of the said meridian."

The line is to be drawn "till it strikes the coast of the continent lying in the 56th degree." It "shall be carried along that coast parallel to its windings, and at or within the seaward base of the mountains by which it is bounded." That is, the mountains which bound that coast. The line must first be parallel to the windings of the coast and at the base of the boundary mountains, whether they are parallel to the coast or not. The mountains are not to control the parallelism. Nothing but the coast is to control it. If mountains trend across the coast line, yet the line is to follow the windings of the coast and along the base of the mountains and is not to follow the mountains across the coast and interior waters. Doubtless he meant the mountains already referred to which, as shown by the map, in

their general trend bounded all of the coast, including in coast, such coast as that at the head of Portland Channel, which he in that connection expressly designated as coast.

If he meant the mountains nearest the sea, or those bounding the sea, he never sought in any way to press the idea, and clearly abandoned it when it was rejected by Russia and he agreed to the language embodied in the treaty.

It appears from a letter from Mr. Canning to Sir Charles Bagot of July 24, 1824, that he had communicated to Count Lieven a draft convention made by him, with a request that he would note any points in it upon which he conceived any difficulty likely to arise, or any explanation likely to be necessary. He enclosed to Sir Charles a memorandum made by Count Lieven, and said:

Your excellency will observe that there are but two points which have struck Count Lieven as susceptible of any question. The first, the assumption of the base of the mountains instead of the summit as the line of boundary; the second, the extension of the right of the navigation of the Pacific to the sea beyond Behring's Straits.

As to the first, no great inconvenience can arise from your excellency (if pressed for that alteration) consenting to substitute the summit of the mountains instead of the seaward base, provided always that the stipulation as to the extreme distance from the coast to which the *lisière* is in any case to run be adopted (which distance I have to repeat to your excellency should be made as short as possible), and provided a stipulation be added that no forts shall be established or fortifications erected by either party on the summit or in the passes of the mountains.^a

There is not the least intimation here that Mr. Canning was talking about any different mountains from those proposed by Russia. If he had proposed different mountains Count Lieven would certainly have been struck by it, and he says expressly that only two points struck him. He shows that he knew that Count Lieven understood his proposition as simply "the assumption of the base of the mountains instead of the summit as the line of boundary," and that he was not proposing any mountains different from those previously indicated by Russia.

Count Lieven certainly understood that he referred to the "chain of mountains" already designated and not to some different mountains. In a letter to Count Nesselrode, July 13, 1823, he says:

As regards the frontier of the respective possessions to the south of Mount Elias, Mr. Canning makes it run along the base of the mountains which follow the sinu-

^a U. S. C. App., 187-188.

osities of the coast. I thought it my duty to represent to him that when a chain of mountains is made to serve for the establishment of any boundary whatever, it is always the crest of those mountains that forms the line of demarcation, and that, in this case, the word "base," from the vague meaning attached to it, and the greater or less extension which may be given to it, did not appear to me adapted to protecting the delimitation in question from all controversy. ^a

This is further shown by his memorandum on the North-West Coast Convention, as follows:

The plan of the agreement drawn up by the English cabinet makes the boundary line of the Russian and English possessions on the northwest coast of America, south of Mount Elias, run *along the base of the mountains which follow the sinuosities of the coast*. It is to be observed that, as a general rule, when a chain of mountains serves to fix any boundary line, it is always the summit of the mountains which constitutes the line of demarcation. In the case now under consideration, the word *base*, because of its indefinite meaning and the greater or less expansion that can be given to it, seems hardly of a nature to fix the boundary line beyond all further question, for it is certainly not among the impossibilities, in view of the uncertain ideas yet prevalent in regard to the geography of these regions, that mountains chosen for boundary lines should extend, by an imperceptible declivity, to the very edge of the coast. ^b

In this memorandum he says, that according to the plan of the English Cabinet the line is "to run along the base of the mountains which follow the sinuosities of the coast." If he had understood that this was a different set of mountains, he certainly would have commented on it. He proceeds in the next sentence to say that,

When a chain of mountains serve to fix any boundary line it is always the summits of the mountains which constitute the line of demarcation.

He has in mind the same "chain of mountains" which Russia had proposed, and the only question considered is whether or not the base shall be substituted for "la cime." He says further, it is not among "the impossibilities" in view of the uncertain geographical knowledge, "that mountains chosen for boundary lines should extend, by imperceptible declivity, to the very edge of the coast." This is seized on in the British Case, as a strong argument to show that, he understood that the coast mountains were meant. It proves just the contrary. If the mountains nearest the sea were understood, certainly their extending to the very edge of the water would not have been spoken of as something, "not among the impossibilities." Such language was entirely applicable to the chain of mountains

^a U. S. C. App., 186-187.

^b U. S. C. App., 189.

running from the head of Portland Canal northward, and to the interior of all the waters. They might well so descend near the heads of inlets, and might be expected there to approach by an imperceptible declivity to the very edge of the coast. The mountains nearest to the sea would not be expected to do anything else. What would be one of the possibilities in one case, would be the rule in the other case.

In his letter of explanation to Mr. Canning of Aug. 12, 1824, Sir Charles Bagot, in discussing the negotiations, differences, propositions and counter-proposition, never made any allusion whatever to the mountains, although in the "Contre Draft of the Russian Plenipotentiaries," which he transmitted, all reference to the mountains had been eliminated, and they went back to his original proposition of a line following from its intersection with the 56° of latitude, "*cette côte parallèlement à ses sinuosités.*" They were unwilling to risk the base of the mountains, and hence professed to abandon the mountains altogether, in order to secure a strip of uniform width, as England had proposed.^a

Count Nesselrode, in his letter to Count Lieven of Aug. 31, 1824, referring to his counterdraft, says:

It abolishes the establishment of the mountains as the boundary of the strip of mainland which Russia would possess on the American Continent, and limits the width of this strip to ten marine leagues, in accordance with the wishes of England.^b

The third explanation with regard to the contre projet is as follows:

In the first paragraph of this article, as in Article II, we have suppressed all mention of the mountains which follow the sinuosities of the coast. It became useless from the moment that one (of the articles) fixed the width of the strip of mainland which would belong to Russia in marine leagues.^c

This explanation is not entirely consistent with the previous contention of Russia, as to the desire for a natural mountain barrier, and manifestly they wanted then, to get away from the demand of Great Britain, for the line to run along the base of the mountains, fearing that it might come at points too near the coast.

^a U. S. C. App., 190-192.

^b U. S. C. App., 204.

^c U. S. C. App., 206.

Mr. G. Canning, in his letter to Mr. S. Canning of Dec. 8, 1824, called attention to this change, as follows:

The Russian plenipotentiaries propose to withdraw entirely the limit of the *lisière* on the coast, which they were themselves the first to propose, viz.: the summit of the mountains which run parallel to the coast, and which appear, according to the map, to follow all its sinuosities, and to substitute generally that which we only suggested as a corrective of their first proposition.

We cannot agree to this change. It is quite obvious that the boundary of mountains, where they exist, is the most natural and effectual boundary. The inconvenience against which we wished to guard was that which you know and can thoroughly explain to the Russian plenipotentiaries to have existed on the other side of the American continent, when mountains laid down in a map as in a certain given position, and assumed in faith of the accuracy of that map as a boundary between the possessions of England and the United States turned out to be quite differently situated, a discovery which has given rise to the most perplexing discussions. Should the maps be no more accurate as to the western than as to the eastern mountains, we might be assigning to Russia immense tracts of inland territory, where we only intended to give, and they only intended to ask, a strip of seacoast.

To avoid the chance of this inconvenience we proposed to qualify the general proposition "that the mountains should be the boundary, with the condition if those mountains should not be found to extend beyond ten leagues from the coast." The Russian plenipotentiaries now propose to take the distance invariably as the rule. But we can not consent to this change. The mountains, as I have said, are a more eligible boundary than any imaginary line of demarcation, and this being their own original proposition, the Russian Plenipotentiaries cannot reasonably refuse to adhere to it.

Where the mountains are the boundary, we are content to take the summit instead of the "seaward base" as the line of demarcation.^a

Thus he brought Russia back to her original proposition, and acceded to it, and the reasoning on which it was based. He abandoned the seaward base of the mountains bounding the strip of coast. He shows that he accepted the original chain, comprehending the entire coast as shown on the maps, that he intended to give "a strip of seacoast," and that he put the limit against recession from this coast, not that he ever contemplated getting any of the coast by adhering to the mountains, but because he feared that, without this limitation, he might be assigning "immense tracts of inland territory." It is impossible to predicate any such fear, if he had contemplated such a mountain line as Great Britain now contends for, for those peaks were visible from the waters which had been navigated by Vancouver and had not been depicted

^a U. S. C. App., 210-212.

as a mountain chain. If the coast meant, was the one now contended for, then such a fear as that expressed by Mr. Canning was a patent impossibility to him, and all the other negotiators.

The contre-projet submitted in accordance with these instructions by Mr. Stratford Canning provided that:

* * * la dite ligne remontera au Nord (l'Isle Prince of Wales appartenant en entier à la Russie), le long de la Passe, dite Portland Channel, jusqu'à ce qu' elle touche à la Côte de terre ferme au 56me degré de Latitude Nord, depuis ce point ci, où la ligne de démarcation touche au 56me degré, elle suivra le crête des Montagnes dans une direction parallèle à la Côte, jusqu'au 141me degré de Longitude Ouest (Même Méridien).^a

Thus he designates it as "la crête des Montagnes dans une direction parallèle a la Côte." The treaty has it, "la crête des montagnes situées parallèlement a la Côte."^b

Russia, while not willing to take the seaward base of the mountains as the boundary, was willing to take the crest without any distance limitation, and complained of the insistence of Great Britain. In his letter to Count Lieven of March 13, 1825, Count Nesselrode said:

Upon exchanging this instrument for that which is to be delivered to you by the Court of London, the Emperor wishes you, Monsieur le Comte, to remark to Mr. Canning that it would have been more in conformity, in the opinion of his Imperial Majesty, both with the principles of mutual justice and with those of reciprocal accommodations, to give as a frontier to the strip of coast which Russia is to possess from the fifty-sixth degree of north latitude to the point of intersection of the one hundred and forty-first degree of west longitude the crest of the mountains which follow the sinuosities of the coast.

This stipulation, in fact, would have secured to the two powers a perfect equality of advantages and a natural boundary. England would have found her profit in it wherever the mountains are less than ten marine leagues from the sea, and Russia wherever the distance separating them from it is greater. It seems to us that, in the case of countries whose geography is still little known, no more equitable stipulation could be proposed.^c

Count Lieven reported the reply as follows:

Mr. Canning, while rendering full justice to the intentions which determined the concessions granted by our court, whose conduct on this occasion has borne indisputably the stamp of the friendly feelings of His Majesty, the Emperor, toward England, attempted to justify the persistence of the British Government by assuring me that it arose solely from a sincere desire to prevent the recurrence of any disagreeable discussion in future, and not from any intention of acquiring an increase

^a U. S. C. App., 213.

^b U. S. C. App., 3.

^c U. S. C. App., 227.

of territory or of limiting the extension of the Russian possessions; that the disputes in which the English Government finds itself engaged at this moment with the United States Government, on account of a stipulation of the treaty of Ghent similar to the one proposed by our court, and which likewise fixed a chain of mountains as the frontier between the possessions of the two States, had shown it all the inexpediency of a delimitation established on this principle, the mountains having been found to deviate very considerably from the direction given them on the maps which were thought to be the most correct and the most detailed; that this inexpediency having presented itself in the case of countries whose geography is much better known than that of the regions to which the stipulations of the convention of February 16 (28), last relate, the English Government, in now insisting upon the fixing of a less vague boundary, thought that it gave a proof of the value which it attaches to the prevention of even the possibility of a discussion as to the tenor of the transaction concluded between the two cabinets.^a

Thus it appears that all the time they negotiated and contracted with reference to a chain of mountains, that the crest of this chain was to be followed, that the chain was one that was depicted on the maps as running around all the coasts, from the head of Portland Channel to Mount St. Elias, and that the mountains were not insisted on, with any intention of, acquiring an increase of territory, or limiting the extension of the Russian possessions.

If it appear that no such chain exists, or that, if it may exist, it lies at no point within ten marine leagues of the coast, is that any reason for forcing the line to other mountains, which manifestly were not meant, and which defeat the very reasons which plainly controlled in selecting the chain which, in reference to the coast, appeared to be suitably located? The correspondence has been appealed to by both sides and the language of the treaty has been scrutinized. It will be helpful to inquire what interpretation was put upon this particular feature of the treaty.

THE EVIDENCE OF THE MAPS ISSUED AFTER THE TREATY AS TO WHAT MOUNTAINS WERE MEANT BY THE TREATY.

In 1826 Russia issued an Admiralty Chart showing the boundary line.^b This line is laid down about ten marine leagues from the general trend of the interior coast. The map does not show any mountains where the line falls. It shows distinctly mountains right at the coast, following all of its sinuosities, and other mountains covering a large part of the territory, situated back of those next to the sea, with an absolutely clear space between the boundary line,

^a U. S. C. App., 230, 231.

^b U. S. Atlas, No. 11.

and all mountains from the head of Portland Channel all the way round to Mt. St. Elias.

This was an official map issued the year after the Treaty, when everything was fresh in the mind. The most striking thing on it, looking to the long negotiations just terminated, was the boundary line. The next most striking thing is, that the line is drawn exactly where the chain of mountains depicted on Vancouver's and other maps, which were before the negotiators, was located. The next most striking thing is that this chain of mountains is not shown at all on the map. The next most striking thing is that other mountains are shown to the seaward of the boundary line, and that the line nowhere touches them, and cannot, on account of the clear intervening space, possibly be correlated with them. The declaration of the map, put into words, is "The mountains next to the sea were not the mountains meant by the Treaty, and the boundary line is not to be drawn along the crest or from summit to summit of these mountains or in any way with reference to them."

The map of Arrowsmith issued in 1833, speaks exactly the same message.^a The most conspicuous thing in this map is a note as follows:

"NOTE.—Wherever the summit of the Mountains (which are supposed to extend in direction parallel to the Coast) from the 56th degree of N. Lat. to the point of intersection of the 141st degree of W. Long. shall prove to be at the distance of more than 10 marine leagues from the Ocean the limit between the British Possessions and the line of coast which is to belong to Russia, shall be formed by a line parallel to the windings of the Coast and which shall never exceed 10 marine leagues therefrom. See Art. 4th, Treaty 1825."

The line is put back of the "mountains next to the coast" because they were not "the mountains which are supposed to extend in direction parallel to the coast from the 56th degree of N. Lat. to the point of intersection of the 141st degree of W. Long."

The map of Brué of 1833 shows a chain of mountains, just as did the maps which the negotiators used. It also shows mountains to the seaward of this chain. The boundary is made coincident with the chain and is entirely disassociated from these other mountains.^b

^a U. S. Atlas, No. 12.

^b U. S. Atlas, No. 13.

Greenhow's map of 1844 shows the boundary drawn just as in the Russian Admiralty map and Arrowsmith's map, on a clear space. It also shows mountains to the seaward of the line, but not so continuous or so pronounced as the others. The line is drawn back of all of these mountains.^a

The map of De Mofras of 1844^b shows the same as that of Brué.

The Russian map of 1861^c is to the same effect as that of 1826.

That of Berghaus (1863)^d is to the same effect as the Russian map and that of Vancouver.

The Russian map of 1844 revised to 1864 is the same.^e

We have seen what Russia understood, and what disinterested cartographers understood. Look at the British Admiralty Map published in 1856 and corrected to 1865.^f It shows a line marked "Boundary between the British and Russian Territory" drawn without touching a mountain from the time it leaves the mountains at the head of Portland Channel until it reaches Mt. Fairweather. It also shows continuous mountains all the way around the coast, and down to the very water. Between these mountains and the boundary there is an intervening clear space of many miles in width all the way around. This map says unmistakably that "The mountains next to the sea are not the mountains meant by the Treaty. They have nothing to do with it, and the line must be drawn just as if they did not exist."

The map of Arrowsmith, printed by order of the House of Commons in 1857,^g shows the boundary line drawn in an absolutely clear space, about ten marine leagues from salt water, and it also shows mountains parallel to almost all the extent of the coast of the interior waters, and other mountains between them and the line, but it does not touch any of them until it reaches Mt. Fairweather, and moreover it is separated from them by an absolutely clear space of many miles in width.

The United States understood all these messages of the maps, just as Mr. Middleton understood from Mr. Canning what the Treaty provided, and so when the first official map was made, under the direction of Mr. Sumner, it showed mountains next to the sea all

^a U. S. Atlas, No. 15.

^e U. S. Atlas, No. 22.

^b U. S. Atlas, No. 16.

^f U. S. Atlas, No. 23.

^c U. S. Atlas, No. 20.

^g British Atlas, No. 21.

^d U. S. Atlas, No. 21.

the way round, but it also showed the boundary line far to the interior of all of these mountains.^a

This was the interpretation of the United States as to what mountains were meant by the Treaty and, what is even more significant in the present argument, it is an affirmative and positive declaration that the mountains next to the sea were not those meant by the Treaty.

To the same effect, varying only in immaterial details, is the official map of British Columbia of 1884, and that of the Dominion of Canada corrected to 1882.^b

Here are Russian, Canadian, English, American, and private maps of well known cartographers, from the year after the Treaty to the year of the American purchase, and American and Canadian maps after the purchase, all of them showing the boundary line as it was understood under the terms of the Treaty, all of them showing mountains next to the sea, and not one of them drawing the line along the summits of these mountains, but segregating them in such a pronounced and conspicuous way by laying it down with an interval of clear space of many miles that the line could not possibly be associated with them.

From the time of the treaty of 1825 down to 1895, a period of 70 years, no official map was ever issued, showing the boundary line drawn along the summits of the mountains next to the sea, and of the scores of maps issued during that period by cartographers not one has been produced that so depicts the line.

If the uniform conduct of the parties most interested, during a period of seventy years, and the general consensus of the educated world, publicly declared, could conclude a matter, then there would be no room for argument on the question.

THE STIKINE RIVER.

DRYAD AFFAIR.

Nine years after the Treaty of 1825, what is known as the Dryad Affair occurred. The Dryad was a vessel of the Hudson's Bay Company which in 1834 appeared off St. Dionysius, a redoubt constructed by the Russians near the mouth of the Stikine River. The avowed purpose of the vessel was to establish a trading post up the Stikine on

^a U. S. Atlas, No. 24.

^b British Atlas, Nos. 31, 32.

English territory. Mr. Ogden, who was in charge of the expedition said in a letter of June 20, 1834, to the Governor of the Russian Territory:

My instructions from the Governor of the Honorable Hudson's Bay Co., residing in Columbia River, are to trade and form an establishment ten marine leagues inland, in accordance with clause 2nd, art. 4 of Convention entered into between Great Britain and Russia, &c.^a

The Hudson's Bay Company had the privilege, under the Treaty, of trading in all that country for ten years, and its representatives certainly knew then, as well as it is known now, that there were mountains along the Stikine River nearer the sea than ten marine leagues. They understood, as everybody else had understood, that the mountains referred to in the Treaty, were not those mountains. They assumed that they were ten leagues or more from the coast, and so proposed to make their establishment ten marine leagues from the coast. If they had believed that the mountains referred to in the Treaty, were those nearest the sea, then they never would have said that they were going to "form an establishment ten marine leagues inland in accordance with clause 2nd art. 4 of Convention".

Mr. Ogden had, during the year 1833, gone up the Stikine River and had selected the spot where the post was to be established.^b

The Russian representatives, acting from motives with which we are not concerned, prevented the vessel from entering the river. On account of this action the British Government demanded of the Russian Government indemnity on behalf of the Hudson's Bay Company. The occasion for this demand was a letter from Pelly, Deputy Governor of the Hudson's Bay Company, addressed to the representative of Great Britain, in which he stated that, the object of the expedition was, "to form a trading establishment within the British Territories at a distance from the ocean exceeding ten marine leagues."^c

Lord Durham, in a communication of Dec. 11, 1835, to Count Nesselrode, making claim for damages, refers to the letter of the Governor of the Hudson's Bay Company, and the complaint that the "Russian Authorities on the N. W. Coast of America have interfered with an expedition fitted out under the direction of that Co. for the purpose of forming a settlement ten leagues up the Stikine River." He fur-

^a U. S. C. App., 269.

^c U. S. C. App., 278.

^b U. S. C. App., 272, 283, 313.

ther says that "the ultimate object of the expedition was to form a settlement *within the British Territory*."^a

Other articles of the Treaty were referred to in the correspondence, but they are not material to the present discussion. It is made clear that, Russia and Great Britain both understood that, the purpose of the expedition was to go ten marine leagues up the Stikine, in order to get to British Territory. This shows that both governments understood that, the mountains near the sea were not meant by the Treaty, for everybody with even the slightest knowledge about that country knew that the mountains nearest the sea were not ten marine leagues from the sea. Russia disavowed the acts of its representatives, but the affair hung on, until it was merged in the lease of the *lisière* to the Hudson's Bay Company.

SURVEYS OF THE STIKINE.

The Stikine River was surveyed by Russia in 1837 and the boundary was located on a map at a point where it was regarded that under the Treaty the line would run, and this point was about ten marine leagues from the coast, certainly far east of the summit of the mountains nearest to the sea.^b This line was located after actual knowledge had been gained of the mountains within ten marine leagues of the sea, and in the light of this knowledge, taken in connection with the provisions of the Treaty, the mountains next to the sea were disregarded. This was an explicit and deliberate interpretation put by Russia upon the Treaty, so far as the summit of the mountains next to the sea, and the summits of mountains within ten marine leagues from the ocean were concerned.

The Russian Government in 1863, on account of a report that gold had been discovered on the Stikine about the boundary line, had the river surveyed. A report and map of this expedition was made by Professor Blake of Yale University, both of which were published by the United States in 1868.^c This map shows mountains on both sides of the Stikine River from the very mouth of the river all the way up, above the boundary line as claimed by the United States.

In 1868 Professor Leach, formerly of the English Sappers and Miners, was employed by the Hudson's Bay Company, to survey thirty miles inland from the coast on a salt water line, that the Com-

^a U. S. C. App., 285, 286.

^c U. S. Atlas, No. 29.

^b U. S. C. App., 514, No. 28.

pany might be able to build their trading post in British Columbia.^a This shows that the Hudson's Bay Company ignored the mountains to the seaward of the ten marine leagues.

From 1872 to 1876 on account of the development of gold deposits in the Cassiar region the trade on the Stikine had grown to such proportions as to impress both governments with the great importance of establishing the boundary line. As shown, there had been various surveys, all proceeding upon a plan which completely ignored the mountains next to the sea, as in any way controlling the location of the line. There had been no point fixed by convention.

In 1874 a British Custom House was established on the Stikine River about where the boundary was supposed to be.

On March 14, 1874, public notice was given by the Collector of Customs that duty would be collected "at the boundary post or at Buck's Bar."^b This location was not made with reference to the mountains next to the sea but with reference alone to the ten league limit.

The Secretary of State, Mr. Fish, understood that this Custom House was intended to be located on the boundary line, for in a letter to Mr. Watson, the British Chargé, dated May 18, 1874, he speaks of "the location of a British Customs officer at the boundary line between the two countries on that river."^c

The occasion of this was a remonstrance from citizens of the United States, on account of "the action of the Canadian officer of the Customs stationed on the boundary line at Stikine River."^d

Mr. Watson, on Sept. 29, 1874, at the request of the Earl of Dufferin, forwarded to the Secretary of State, a copy of a minute of Council in regard to instructions given to the "Collector of Customs at the Boundary line on the Stikine River."^e

The fixing of this boundary line was an independent and deliberate act of Great Britain. No such line could have been selected on the theory now advanced as to the mountains next to the sea being those meant by the Treaty. This was not a conventional line or a provisional line.^f

In his letter of Oct. 16, 1876, to Hon. A. Mackenzie, Mr. Justice Gray spoke of this as a "conventional line" and "a conventional

^a U. S. C. C. App., 73.

^b U. S. C. C. App., 61.

^c U. S. C. C. App., 64.

^d U. S. C. C. App., 64.

^e U. S. C. C. App., 65.

^f B. C. App., 191, 192.

boundary". The Privy Council, having this letter under consideration, said that there was no such conventional line.^a

Sir Edward Thornton followed the error from Justice Gray, in his letter to Mr. Fish of Jan'y 15, 1877.^b The mistake is clearly shown by Sir Edward Blake, and the Earl of Carnarvon. Sir Edward Blake said:

No mention is made in the Memorandum of any agreement or understanding, formal or informal, as to a conventional boundary line pending the ascertainment of the true line. No such agreement or understanding has ever been made by this Government or by any one with its knowledge or authority.

There was not, and, indeed, under the circumstances which I have mentioned, there could not have been any intention to assert the existence, or to suggest the continuance of any such agreement or understanding.^c

Mr. Fish, on September 13, 1875, called the attention of Great Britain to a report that a site for a town was about to be located by British subjects on the Stikine, within the territory of the United States, and on Oct. 22, 1875, the Earl of Carnarvon wrote to the Earl of Dufferin saying:

I have the honor to transmit to Your Lordship a copy of a despatch from Her Majesty's Minister at Washington, reporting a conversation with Mr. Fish respecting the settlement of some British subjects at a point near the Stikine River, alleged by American officers to be within the United States territory and below the British Custom House, which is also stated to be within the United States boundary.

In view of the circumstances represented by Mr. Fish it appears to Her Majesty's Government desirable that an officer should be sent by your Government or by the Provincial Government of British Columbia to ascertain whether the settlement alluded to and the British Custom House are within British Territory.^d

This letter of Sir E. Thornton said:

The point was stated to be below the British Custom House on the Stikine, which Custom House was also supposed to be within the United States territory, that is, within the ten marine leagues from the coast at which the boundary should be in accordance with the provisions of the 4th Article of the Convention of February 28th, 1825, between Great Britain and Russia.^e

On the 23rd day of November, 1875, the Committee of the Privy Council reported that:

In the discussion of this subject between Sir Edward Thornton and Mr. Fish, the latter suggested that as the weight of the evidence seemed at present to be in favor of the point in question being in United States territory, the settlers should be called

^a B. C. App., 197.

^b B. C. App., 202.

^c B. C. App., 222.

^d U. S. C. C. App., 67.

^e U. S. C. C. App., 68.

upon to suspend operations for the present and until the question of territory could be decided.^a

The report further said:

The Stikine River intersects the international boundary, in the vicinity of the 57th degree of north latitude, with so intricate a basis for determining the true line, it appears to the Committee that a satisfactory solution of the question can only be arrived at by accurately defining the point where the boundary intersects the Stikine River, and as settlements are likely to increase along the banks of that river, it seems to be obviously in the interests of both countries that the true line should be defined at this point without further delay.^b

The Privy Council recited the boundary provisions of the Treaty in the report, and then stated that "The Stikine River intersects the international boundary in the vicinity of the 57th degree of north latitude." The summits of the mountains nearest the sea are not in the vicinity of where the 57th degree crosses the river, and could not have been regarded as the mountains meant by the Treaty, for if they had, then no such crossing could have possibly been indicated.

A British trader by the name of A. Choquette was, Sept. 19, 1876, notified by the United States authorities that he was within United States territory,^c and this, together with the Peter Martin case, led to a survey by the Canadian authorities for the purpose of determining the boundary line.

The order against Choquette was suspended pending the survey.

On Jan'y 15, 1877, Assistant Adjutant General Wood, in a letter to General Howard said:

As a matter of fact, there is no well defined range of mountains extending in direction parallel to the coast.

A rugged, broken region extends back from salt water a considerable distance; the mountain peaks visible seeming to stand in groups or clusters; a confused mass of hills of varying altitudes "from three thousand to six thousand feet, the highest being, perhaps, in the vicinity of the point marked Grand Cañon, in latitude about 57° 20' N."

It would appear that the Russian Government had caused a monument to be set up on the Stickeen, marking a point ten marine leagues from the coast, and that this monument was, or is located some one hundred and thirty-five (135) miles from the mouth of the river, in the vicinity of a point called Shakerville.^d

This letter enclosed one from Captain Jocelyn of Oct. 1, 1876, in which he said:

Attention is respectfully invited to the map herewith enclosed, and to the provisions of the treaty between the United States and Russia proclaimed June 20, 1867.

^a U. S. C. C. App., 68.

^b U. S. C. C. App., 69.

^c U. S. C. C. App., 70.

^d U. S. C. C. App., 79.

A line ten leagues from the ocean, running parallel to the windings of the coast, would cross the Stickeen River nearly at the point indicated. I have personally examined the country near the river from its mouth to the head of steam navigation and was impressed with the difficulty that would arise in determining a continuous summit of the Coast mountains. There is no range or chain, but rather for the entire distance of over one hundred miles, and to the right and left as far as the eye can reach, a confused mass of mountain peaks with elevations from three thousand to six thousand feet, the highest being perhaps in vicinity of the point marked "Grand Cañon" in latitude about $57^{\circ} 20'$.^a

So far as the record shows this comment was the first ever made upon the irregular character of the mountain formation, showing no chain or range, but "a confused mass of mountain peaks." This description thus made is entirely sustained by the evidence hereinafter referred to. The character of the mountains accounts for the fact that, all efforts made up to that time to locate the boundary line, ignore those mountains, as not affecting the location.

HUNTER SURVEY AND PETER MARTIN AFFAIR.

The facts in the Peter Martin case have been fully set forth in the case of the United States. The effect of the Hunter survey is sought to be avoided in the British Case. Mr. Hunter was instructed by Mr. Dennis, the Surveyor General, to proceed to the Stikine River to make a survey of it and "such a reconnaissance of the country embracing the coast range of mountains in the immediate vicinity as will enable you to ascertain, with approximate accuracy, the boundary on the said river between the Dominion and the territory of Alaska."^b He was furnished with an extract of the treaty describing the boundary, and other data. Mr. Dennis certainly did not mean by "the coast range of mountains" any such irregular peaks as are now contended for, or the summits of the mountains next to the sea, for he proceeds, in giving his specific directions, after calling attention to a tracing made by Chief Justice Begbie, to say:

You will make it your duty to verify this sketch as to the dotted red line shown, and generally take such observations as will enable you to lay down, with approximate accuracy, the crossing of the river (should the same occur within ten marine leagues of the coast) by a line, in the words of the Treaty, "following the summit of the mountains parallel to the coast."^b

He was directing his attention to the ascertainment of whether or not there were such mountains as the treaty provided for within ten

^a U. S. C. C. App., 80.

^b B. C. App. 224.

marine leagues, but did not assume that these were the mountains nearest the sea from which a line could be drawn from summit to summit. If he had made any such assumption, then these instructions would have been superfluous.

On the same day Mr. Dennis gave him supplemental instructions to locate the exact spot where Peter Martin was taken ashore and where he committed an assault.

Mr. Hunter made his report in June, 1877.^a

Mr. Dennis, in the opening of his instructions, referred specifically to the Coast Range. Mr. Hunter shows that the Coast Range was to the east of Portland Channel. After showing the location of this range, he says:

Another range is supposed to originate somewhere in the neighborhood of Portland Channel, in latitude 55° N. and running apparently about parallel to the coast. Its axis crosses the Stikine River, 24 $\frac{3}{4}$ miles from its mouth; Mount Whipple, the highest peak on the River lies on this axis. It will be more particularly referred to hereafter.

From latitude 58° 40' N., or 150 miles to the north of the Stickeen, the coast line for 200 miles farther northward has been accurately surveyed by the United States coast survey, and the position of the adjacent mountain range determined and laid down on the charts.

The summit of this range is shown to run parallel to the coast, distant from it 13 to 20 miles.

The position and altitude of five of the highest peaks were accurately determined.^b

The mountains surveyed by the United States Coast Survey which he calls a range "parallel to the coast distant from it 13 to 20 miles" are the mountains which are parallel to the coasts of the bays and inlets and the distance given is from such coasts. He says of these mountains:

There is reason to believe that the range from the southward, crossing the Stikine River, as above described, runs northward along the coast till merged in the St. Elias range. Its snowy summits can be seen stretching for many miles along the seaboard to the north. It is undoubtedly the range of "mountains parallel to the coast" referred to in the Convention.^c

He further says:

From the junction of the Iskoot with the Stikine, looking nearly due south, down the valley of the latter can be seen, distant 12 miles, a range of high snowy summits stretching across the bearing of the river. These mountains appear rounded,

^a B. C. App., 225.

^b B. C. App., 227.

^c B. C. App., 227—228.

massive and higher than any yet met with, and seem to form a barrier across the valley, which here opens out into a wide basin, enclosed on the east and west side by high mountains and receiving the Kwahteetah, a considerable stream, from the eastward.

This basin lies near the general axis of the range which has been before referred to as the mountains parallel to the coast.

The line marked on the river as the boundary between the Dominion and the territory of the Alaska crosses the lower end of the basin above described, and will be more particularly noticed below.^a

Thus he fixes the general axis of the "range of mountains parallel to the coast referred to in the Convention" at 24.74 miles from the coast by the river and at 19.13 at right angles. The line now insisted on is 6 miles from Point Rothesay and is 18.74 miles below the line indicated by him as in the words of the Treaty "following the summit of the mountains parallel to the coast."^b

He fixed the ten marine league line 53.99 miles up the river from the coast. He located the point where Martin committed the assault on the shore thirteen miles from the mouth of the Stikine and eight and a half miles within Alaska.

The British Case says of the survey:

Having regard to the proviso subject to which this arrangement was accepted by the United States' Government, Mr. Hunter's survey has no binding effect. The incident is, however, of importance in that it brought to the attention of the United States' Government the manner in which it was considered on the side of Great Britain the Treaty ought to be applied.^c

It has a very different import. It did not indicate in the remotest way that Great Britain was then putting forward a contention that the coast meant in the Treaty was the general coast and not the coast of all of the interior waters. No such conception could be formed from anything suggested by Hunter's report. His report, if it is to be taken as indicative of the views of Great Britain, clearly shows that, with a full knowledge of the mountains along the Stikine, from the mouth up to the very mountains now taken for fixing the line across the Stikine in the British Case, these mountains were deliberately discarded as not being those meant by the Treaty, and a range far to the interior was taken as the one parallel to the coast meant by the Treaty.

^a B. C. App., 229.

^b B. C. App., 230.

^c B. C., 34.

The Government of the United States had demanded the release of Martin. The communication stated that—

On the 12th of September they made a landing at a point on that river, only a few miles from its mouth, within the territory of Alaska, for the purpose of cooking food.^a

and that thereafter the assault was committed. It was represented that he should not be tried for the offense, it having been committed within the jurisdiction of the United States. The release was never demanded on the ground that he was conveyed through United States territory by being carried down the river.

In a letter of Dec. 6, 1876, from Mr. Fish to Sir E. Thornton, he refers particularly to the "presence of the prisoner upon American soil".^b

Again in his letter of January 10, 1877, Mr. Fish said to Sir E. Thornton that the testimony showed that "the assault occurred in what is considered to be Alaska territory".^c

Lord Dufferin, in a letter of Feb. 12, 1877, to the Earl of Carnarvon, referred to the correspondence of Mr. Fish. He also said:

It is alleged in the prisoner's behalf that the spot at which the assault was made is not within Canadian territory, but is part of the soil of Alaska.^d

As shown, Mr. Hunter was requested to fix and did fix the precise spot where the landing was made. The British authorities among themselves discussed the right to transport Martin down that part of the Stikine within Alaska, and came to the conclusion that their right of navigation was limited to commercial purposes.^e

Mr. Edward Blake, Minister of Justice, in his report of Feby. 5, 1877, said:

I do not understand Mr. Fish to assert that the transport of Martin *via* the Stikine River was a violation of the sovereignty of the United States. On the contrary, he seems to make no complaint of this, and impliedly, if not expressly, admits the propriety of this act. His position is, that the sovereignty of his country was violated by what took place on the shore of the river, in case the locality should turn out to be within the limits of the United States.

In this view, I think it the more prudent course, in replying to Mr. Fish, to deal only with the affair on the shore; assuming, without any special reference to the matter, the legality of the transport by the river.^f

^a B. C. App., 186.

^b B. C. App., 194.

^c B. C. App., 198.

^d B. C. App., 203.

^e B. C. App., 201.

^f B. C. App., 210.

The Earl of Carnarvon, in a communication of August 16, 1877, to the Earl of Dufferin, said:

In communicating with the United States authorities, it should be stated that Peter Martin is surrendered on the ground that he was a prisoner conveyed through United States territory. ^a

But the Minister of Justice of Canada, in a report of September 19, 1877, said:

I recommend, however, that, in communicating the result to Her Majesty's Minister at Washington for the information of the Government of the United States, it be stated that the ground of the action is that after enquiry it appears that Martin was a prisoner conveyed through United States territory, without stating whether the territory referred to is the river or the shore, so that the very important general questions involved may be left as far as possible still at large. ^b

The communication notifying the Government of the United States simply said:

With reference to the note which Sir Edward Thornton addressed to Mr. Fish on the 11th of last January, I have the honor to inform you that I have just learned from the deputy governor of Canada that the Dominion Government has concluded the inquiry into the circumstances of the case, and has decided upon setting Peter Martin at liberty without further delay. ^c

So it stands that the demand for release was made on the ground that the offense for which he was tried was committed in Alaska. The exact spot was determined by survey, and the Government of the United States was notified simply of the release without any explanation or qualification.

In the way the issue was made and the incident was closed, there clearly was an interpretation; we may go further and say a solemn adjudication, by these two governments that the spot where Martin committed the assault, which was far above the mountain summit line now proposed to be drawn, was within the jurisdiction of the United States. This makes the proposed line at the Stikine an impossible line, and those mountains selected out of the general congeries impossible boundary mountains. After this proceeding the line cannot be moved below that point, and the mountains selected below it must be discarded.

The Hunter line was agreed to as a provisional boundary by the United States.

Sir Edward Thornton, in a letter to Mr. Evarts of January 19,

^a B. C. App., 231.

^c U. S. C. C. App., 87.

^b B. C. App., 233.

1878, enclosed a copy of Hunter's map, and asked whether or not the Government of the United States would accept it, until some exact line could be determined. This was agreed to as a temporary arrangement, provided that it be not construed as affecting in any manner the rights under the Treaty, whenever a joint survey should be made.^a

The British Case is right in saying that the proviso leaves Mr. Hunter's survey without effect, so far as permanently fixing the boundary line; but the survey and the action on it are of effect as showing the interpretation put by the parties upon the treaty so far as rejecting the mountains nearest the sea are concerned, and as establishing that the point where the assault was committed was clearly within Alaska.

SUCH MOUNTAINS AS THOSE CONTEMPLATED IN THE TREATY DO NOT
EXIST WITHIN TEN MARINE LEAGUES OF THE OCEAN.

Reference has just been made to the information given in regard to them in the letter of Asst. Adjutant General Wood of January 15, 1877.

Mr. Dall, in his letter to Dr. Dawson of April 24, 1884, states that the chain of mountains shown on Vancouver's chart has no existence.^b The Marquis of Salisbury, in instructions to the British commissioners in 1898, said:

From Portland Channel to Glacier Bay there is no such continuous range of mountains running parallel to the coast as the terms of the Treaty of 1825 appear to contemplate.^c

Mr. Selwyn, Director of the Geological and Natural History Survey of Canada, says that—

so far as has been observed, there is no single culminating or dominant range which which can be traced for any considerable distance.^d

The testimony of eight of the United States civil engineers, who have repeatedly been in Alaska on surveying and exploring expeditions, shows that such a chain of mountains within ten marine leagues from the sea does not exist. They show that the peaks and hills on the shores of the inlets are in the nature of detached groups, and that as one goes into the interior there are higher mountains always to be seen in the interior beyond where actual explorations and sur-

^a B. C. App., 241-2.

^b B. C. App., 248.

^c B. C. App., 298.

^d U. S. C. C. App., 257.

veys have been made. The country is a plateau of ice and snow from which rise numerous peaks. It is carved into many short ridges separated by deep valleys, many of which are occupied by glaciers. The whole region is full of mountains, and is a network of short, steep-sided ridges, generally lying at right angles to the nearest shore, and connected by short saddles. The general appearance is that of a heterogeneous jumble of irregular mountain masses. In general, the mountains rise abruptly from the sea, and the peaks increase in height as they recede from the coast. See depositions of O. H. Tittmann, H. G. Ogden, W. C. Hodgkins, A. L. Baldwin, J. A. Flemer, H. P. Ritter, J. F. Pratt, and P. A. Welker."

The affidavits of these civil engineers are in entire accord with the topographical maps, and photographs of survey of the International Commission of 1892, and they but elaborate and supplement those maps and photographs. They also describe the mountainous area for some distance inland beyond the limits delineated on the maps. They show that no such chain of mountains as that referred to in the treaty of 1825 as "*la crête des montagnes situées parallèlement à la côte*" exists within ten marine leagues of the coast, between the 56th degree of north latitude and the 141st degree of longitude. And this is equally true, however you define the word "*côte*", and whether it means the shores of the bays and inlets, or whether it means the general trend of what may be termed the main shore, or whether it means the actual contact of the great body of the ocean washing the main portions of the continent.

IT WAS NEVER THE INTENTION UNDER THE TREATY TO DRAW THE LINE ALONG THE SUMMITS OF DISCONNECTED PEAKS, AND IT IS IMPOSSIBLE, ON THE BRITISH THEORY, FOR ANY TRIBUNAL TO DETERMINE WHICH OF SUCH PEAKS SHALL BE CHOSEN.

If a departure be made from the understanding of the negotiators, that the line was to be run along the crest of a mountain chain which was supposed to run from about the head of Portland Channel parallel with the coast, then there is absolutely no guide for selecting the line from mountain summit to mountain summit. If it be adjudicated that the line can be run along mountain summits within the ten marine league limit, then it must be affirmed of it that it will run from the point of the continent where proceeding

"U. S. C. App., 530-538; U. S. C. C. App., 262-264.

up Portland Channel it reaches the 56°, along the crest of the mountains situated parallel to the coast, to the point of intersection of the 141° of longitude, and it must further be affirmed that this line will run along the mountains which the negotiators contemplated.

The negotiators showed that the base of the mountains, along whose crest the line must run, might at places extend even to the sea. Under the British contention a line is to be run along summits of mountains which almost everywhere come down to the sea, and yet it must be maintained that these are the mountains that the negotiators had in view.

The negotiators meant the crest of some particular mountains, and not the summits of mountains generally, that might be situated over that entire region, with liberty to select arbitrarily here or there according to individual fancy. If the line is going to be run from summit to summit, then the side assuming the burden of selecting, must be able to say which are the summits, with reference to which the contract was made. If there are many summits situated over that territory, within the ten marine leagues, and the line can with just as much show of reason be run in a dozen or more different ways by an arbitrary selection, then it is manifest that it cannot be said that any particular ones were those meant by the Treaty, for when the country presents such a formation as to permit so many conflicting results, it is a demonstration that there is no such chain, or crest, or parallel mountains, as the negotiators meant, capable of identification.

The British Case, while designating particular mountains and ridges to be followed, manifests no special predilection for them, but admits that they are not necessarily those contemplated by the treaty, and that the field presents a further variety for choice. It says:

The particular mountains and ridges followed with the reasons for selecting them are set forth in a declaration to be found in the Appendix by Mr. W. F. King, the British Commissioner upon the Survey under the Convention of 1892. It will, of course, be understood that this is not put forward as showing throughout the only possible way of giving effect to the British contentions, but that it is susceptible of any variations in detail which may commend themselves to the Tribunal in examining the topographical conditions met with in tracing the line.^a

The line as suggested by Great Britain skips from mountain top to mountain top, from highland to highland, across many inlets and

^a B. C., 83.

bays, and bears no resemblance whatever to the crest of mountains depicted on the maps that were before the negotiators. An examination of the line proposed, with a criticism of it, will be found in the Appendix to this argument, p. 3.

Where demonstration fails and the line is left to arbitrary selection, the whole mountain provision is absolutely void for uncertainty. It is incapable of application, and no tribunal can assume to make a selection out of a variety offered. The Treaty did not say anything in reference to the ocean, except that where the crest receded more than ten marine leagues from the ocean, the mountains should not control. It did not say crests, or summits, next to the sea, or two, or five, or eight, or any other number of leagues, from the sea. It was plainly manifest that the negotiators had in mind a crest about ten marine leagues from the sea that might in places go farther or come nearer. If there were distinct crests running parallel with the coast, one, say, two leagues, and one ten leagues from the sea, then undoubtedly it would have to be said that the negotiators meant the one ten marine leagues from the sea, for everything demonstrates that this was the distance they had in mind and that the *lisière* was to be of a substantial character.

If from what we know, it is taken to be shown that there is no crest of a chain of mountains within ten marine leagues from the sea, and if it be concluded that summits of mountains can be taken, then the question is, which summits are to be taken, those nearest the sea or those about midway or those nearest the ten marine league limit? Who is to choose? If there were a well defined chain leading from about the head of Portland Channel parallel generally with the coast to the 131st degree, surely that would be said to be the crest, rather than one of mountains which everywhere came down to the sea.

If this would be so as to several crests, then why should not the same be the case as to several sets of peaks? If the Tribunal can roam all over that sea of mountains for a choice, then why should they select those most remote from the ten league limit rather than those nearest? If Mr. Hunter made one selection, and Justice Gray another, and Mr. Dawson another, and the present British Case still another, what rule is there for guidance? The absurdity is still more manifest when it is borne in mind that in each case an appeal is made to the language of the Treaty. There could not be a clearer proof that the Treaty meant no such mountains. It has not been

shown that a crest of a chain of mountains does not exist somewhere east of the head of Portland Channel and just beyond the ten-marine league limit, corresponding with the mountain crest of the Treaty. The country is unsurveyed and unknown. The record is practically blank on that point. If there be such a crest, it is just as potential for fulfilling the condition for drawing the line by measurement, as if the crest in some places came within ten marine leagues of the ocean.

Can the Tribunal say that no such crest exists? If it had been shown that such a crest exists just beyond the ten marine leagues, would the suggestion be entertained for a moment that it should be ignored, and that the line should be drawn somewhere within the ten marine leagues along the summits of such mountains as have been designated? If so, then it would first have to be determined that such crest was not contemplated by the Treaty, and that it must be excluded from consideration. It would have to be held that the Treaty did not mean a crest of a chain of mountains, but that a crest might be made in some way out of the array of summits in that region. Such a theory is not consistent with the negotiations and the Treaty. If it be not admissible, if it were shown that such a crest exists just beyond the ten marine league limit, then why should it be admissible when the record fails to show whether or not such crest exists? Non constat but it does exist. In either event, whether it be shown to exist, or not, in order to take the summits contended for, it must be held that they were the mountains meant.

The Treaty meant some mountains, and it must be that these shore mountains are the ones if they are to be taken. If this be shown, then it is immaterial whether a mountain chain outside of the limit exists or not. If the summits are what was meant, then such a chain could not have been meant. The identification of the summits does not depend on the absence of the chain. If they do not answer to the requirements of the Treaty, they cannot be taken whether the chain fails or not, for something that was not meant cannot be taken to supply the non-existence of what was meant. If they do answer the requirements of the Treaty, and it can be shown from all that transpired that they are the mountains parallel to the coast, whose crest was to be followed, then the fact that there is or is not a crest of a dominant chain of

mountains more than ten leagues from the ocean and parallel to the coast is an immaterial inquiry.

But as has been said, this still leaves the dilemma of choice, and if the Treaty fails to demonstrate a selection and is so vague and uncertain, or rather if it describes what may fit, on account of the formation of the country, a number of different lines, then no court can arbitrarily select, and the provision fails for uncertainty, and the line must be determined by the distance provision.

FROM THE TREATY OF 1825 TO THE TREATY OF 1867, THE UNDERSTANDING MANIFESTED BY GREAT BRITAIN, RUSSIA, AND THE CIVILIZED WORLD AT LARGE WAS THAT IT WAS "THE INTENTION AND MEANING OF SAID CONVENTION OF 1825, THAT THERE SHOULD REMAIN IN THE EXCLUSIVE POSSESSION OF RUSSIA, A CONTINUOUS FRINGE OR STRIP OF COAST ON THE MAINLAND, NOT EXCEEDING TEN MARINE LEAGUES IN WIDTH, SEPARATING THE BRITISH POSSESSIONS FROM THE BAYS, PORTS, INLETS, HAVENS, AND WATERS ON THE OCEAN, AND EXTENDING FROM THE SAID POINT ON THE 56TH DEGREE OF LATITUDE NORTH TO A POINT WHERE SUCH LINE OF DEMARCATION SHOULD INTERSECT THE 141ST DEGREE OF LONGITUDE WEST OF THE MERIDIAN OF GREENWICH."

ASSERTION OF CLAIM BY RUSSIA BY ITS OFFICIAL MAPS TO ALL INTERIOR WATERS AND THEIR COASTS.

In 1826 Russia issued an official map showing the boundary line drawn from Portland Channel to Mt. Saint Elias, about ten marine leagues from the coast of all the interior waters, and substantially where the crest of the mountains is depicted on the Faden map. This map had an inscription on the line reciting that it was the boundary established by the treaty of 1825. It is not contended that the map shows the actual location of the treaty line applied upon ascertained topography. It shows a clear claim to all waters and coasts in dispute. Their boundaries were well known and all of them were included in Russian territory".

" U. S. Atlas, No. 11.

Russia published another map in 1827 and an admiralty chart in 1844, which was revised to 1864, both showing the boundary laid down in the same way. The last named map has an inscription on the boundary line that it was the one fixed by the Treaty of 1825^a.

Another map was published in Russia in 1861 showing the line drawn in the same way, and described as a boundary line under the Treaty of 1825^b.

It is fair to presume that these maps or some of them were known to Great Britain. It is admitted generally in the British Case that maps showing the lines so drawn were known to that government, but their effect is questioned on the ground that cartographers did not know the topography^c.

It is said in the British Case that no disavowal of the correctness of such maps was called for before the question arose. The question distinctly arose when Russia showed a public claim to all of the interior waters and their coasts. If Great Britain understood that under the treaty "coast" did not include the coast of narrow inlets, she was thus called on to make this contention known. The inlets and their coasts were known as well then as now, and if the treaty meant only what is now styled "general coast" or "mainland coast" and did not include the coasts of narrow inlets, Great Britain knew then as well as now that the line could not possibly run around the head of Lynn Canal, which was then known to be more than twenty-five marine leagues from such general or mainland coast^d.

If "coast" was confined to exterior or general coast, then no possible arrangement of the mountains could have carried the line around the head of Lynn Canal. A distinct claim was promulgated and maintained by Russia for forty-two years that certain known waters were within her territory. No claim was made as to precisely where the line should be located actually on the ground, but a continuous *visière* around all of the sea water was, in accordance with Russia's understanding of the treaty, distinctly claimed. The maps of the period showed sufficiently the width of the interior waters to make the coast line theory now advanced just as applicable then.

^a U. S. C. App., 513, No. 18; U. S. Atlas, No. 22; British Atlas, No. 15.

^b U. S. Atlas, No. 20.

^c British Case, 100-101.

^d British Case, 101.

THE OFFICIAL MAPS OF GREAT BRITAIN AND CANADA SHOWED THE UNDERSTANDING THAT RUSSIA OWNED ALL OF THE INTERIOR WATERS AND COASTS NOW IN CONTROVERSY.

Great Britain not only did not protest against the claim of Russia, but announced to the world a like interpretation and maintained such attitude without variation down to the American purchase and to the time immediately preceding this controversy, covering a period of over sixty years.

In 1831 an official map was published, entitled, "Part of Colonial Office Manuscript Map," which showed the line drawn substantially like that laid down on the Russian maps.^a

In the same year there was published another official map, by Bouchette, entitled, "The British Dominions in North America,"^b and showing the line drawn in the same way.

In 1833 a map was published by Arrowsmith, which was inscribed, by permission, to the Hudson's Bay Company. A note on its face refers to the specifications of the Treaty of 1825, and the map shows the line drawn substantially as the Russian Government had drawn it.^c

Other official maps showing the line drawn in the same way were issued in 1850, in 1853, and in 1857.^d The 1850 map was published *by order of the House of Commons*.

In 1857 another map was published *by order of the House of Commons*, entitled, "Map of North America." It has the line drawn as in the other maps referred to.^e

In 1856 a *British Admiralty Chart*, No. 2461, which is shown in the record to be corrected down to 1866, was published. This chart shows the line laid down as in all the other maps, and designates it "Boundary between the British and Russian Territory."^f

Thus from 1831 down to 1866, the year immediately preceding the American purchase, the understanding of Great Britain of the Treaty as to the sovereignty over all of the waters in dispute, was

^a British Atlas, No. 13.

^b British Atlas, No. 14.

^c U. S. Atlas, No. 12.

^d British Atlas, No. 19; U. S. Atlas, No. 17 and No. 19.

^e British Atlas, No. 21; U. S. Atlas, No. 35.

^f U. S. Atlas, No. 23.

shown to be in complete accord with the understanding shown by Russia.

In 1877, ten years after the American purchase, Great Britain published Admiralty Chart No. 787, showing the boundary line drawn in the same way and lettered, "Boundary between British and American Territory." She thus changed the lettering from "Boundary between the British and Russian Territory" to "Boundary between British and American Territory."^a

That boundary line has continued ever since to be shown on Chart 787.^b

THE UNDERSTANDING AS SHOWN BY THE MAPS OF RUSSIA AND OF GREAT BRITAIN RECEIVED GENERAL ACCEPTATION BY ALL CARTOGRAPHERS, AND THE DECLARATIONS OF THE OFFICIAL MAPS OF GREAT BRITAIN WERE CONTINUED WITH THE KNOWLEDGE OF THIS UNDERSTANDING.

A great many maps are shown in the atlases and in the lists, which were published at different periods from 1826 to 1896 in the United States, England, France, Germany and Spain, showing the boundary line between Russia and Great Britain and afterwards between the United States and Great Britain, substantially as it had been drawn upon the Russian and British maps^c.

This proved the general understanding of the enlightened world as to the sovereignty established by the treaty of 1825 over all of the waters and coasts now in dispute.

Great Britain could not have been ignorant of this general understanding. She continued her declarations with a knowledge of it and additional weight is thereby given to such declarations. She understood the way in which her declarations were accepted, and with this understanding reiterated them. Other countries were not disinterested parties, but had a direct interest in knowing and determining the sovereignty over waters which they might navigate and

^a U. S. Atlas, No. 38.

^b B. C. C. App., 50.

^c U. S. Atlas, Maps Nos. 13, 14, 15, 16, 18, 21, 33, 34, 37, 40, 44, 45, 46, 47; British Atlas, Maps Nos. 14, 16, 17, 22; Maps and Charts U. S. C. Appendix, pp. 512-520, Nos. 16, 18, 19, 20, 22 to 27, inclusive, 29 to 40, inclusive, 42, 43, 46, to 51, inclusive, 53 to 67, inclusive, 69, 71, 72, 74, 75, 77 to 84, inclusive, 86, 87; U. S. C. C. App., pp. 243-250, Nos. 90, 91, 96, 99, 101, 106, 107, 108, 109, 110, 112 to 117, inclusive, 119 to 126, inclusive, 128, 129.

coasts upon which they might land. Every nation had a duty and a right in respect of the interpretation of the treaty, and the common understanding of all nations cannot be set aside as irrelevant, especially when it is coupled with representations continued in the light of a knowledge of such common understanding.

The particular inquiry of the fifth question is whether or not it was understood that Russia was to have an unbroken *lisière* around the heads of all the bays and inlets. This inquiry is not concerned with whether or not the line as shown on the maps is accurately laid down with a topographical knowledge of the country. The line must be laid down on the land to meet the conditions which shall be developed, but if the contracting parties understood coast to mean all of the coast, then the line, no matter what the difficulties may be in making it as sinuous as the coast, can never cross it. The evidence of the maps is in harmony with this understanding as to the coast being all of the coast, and they give a uniform expression of such understanding of the two governments.

The maps relied on were the official, concurrent and harmonious utterances of both contracting parties, made after the treaty, and as an expression of their understanding of it. They had all of the information necessary for arriving at such understanding, so far as the question of there being a continuous *lisière* around the heads of the bays and inlets was involved. They knew when they contracted where these waters were, and they also knew where they were when they promulgated the maps. Each government knew what it meant in the treaty by the word "coast," and a line drawn parallel to the coast. If either country did not include the shores of narrow bays and inlets as "coasts," and understood that the line was to be drawn not parallel to the coast of inlets, but to what has been termed in this case "the general mainland coast," it certainly knew that such a line would cut across such a long inlet as Lynn Canal, which is fully eighty miles from head to mouth. Knowing all this, then it follows that a claim made by an official map to all of such inlets was a claim that the party making it understood the word "coast" to mean all of the coast, including the coasts of such inlet, and that the line was not to cross such waters. The following of such a

declaration by a like declaration was a proclamation of an acquiescence in such understanding.

Such an understanding as to the coasts of Lynn Canal, which is far longer than any of the other inlets or bays, necessarily fixes the meaning of "coast" as to all of the interior waters. There could not be one meaning of "coast" which would include all of the shores of Lynn Canal and a different one which would exclude any part of the coasts of the other waters in dispute.

If there was any room for doubt as to the meaning of "coast" on the part of Great Britain, such doubt was resolved by its public declaration of its understanding of the treaty.

RUSSIA SHOWED BY HER OCCUPATION AND EXERCISE OF SOVEREIGNTY OVER THE WATERS AND COASTS IN DISPUTE THAT SHE CLAIMED THEM AS WITHIN HER TERRITORY, AND GREAT BRITAIN NEVER, DOWN TO THE SALE BY RUSSIA TO THE UNITED STATES, ATTEMPTED TO ASSERT ANY JURISDICTION OVER SUCH WATERS OR COAST OR TO OCCUPY THEM IN ANY WAY, OR TO QUESTION THE SOVEREIGNTY OF RUSSIA OVER THEM.

It has been shown that those regions at the time of the treaty and for a long period subsequent thereto were valuable only for fishing and hunting and the control of trade with the Indians. This determined the character of occupation sought and exercised. Russian occupation was partly direct and partly through the natives of the country. Their possession and sovereignty were undisputed by any other government. Neither Great Britain nor any other government ever attempted, so far as shown, in any way after the treaty of 1825 to establish any relations of sovereignty over the natives. Citizens of other governments traded with them, but no other government ever in any official way came in contact with them. It is not contended that any of the natives of that territory held in recognition of the sovereignty of any other power. The relations between them and Russia were as close as were generally maintained at that day by other governments in such remote possessions, offering so little inducement to actual settlement, affording exploitation of such limited variety, and inhabited by a people of such turbulent disposition.

If there had been a conflict of claims of different governments over this territory, the case would be different, and stronger proof than is forthcoming might be demanded to establish the Russian occupation, but no conflicting claim of any character was ever set up and Russia was left by all other governments to exploit and develop her territories in her own way. The country offered no inducements to settlers, and the maintenance of garrisons sufficient to maintain constant authority over all of that territory inhabited by warlike Indians, imposed a heavy burden. Therefore, Russia exercised her authority from central stations and got on with the natives with as little friction as possible, there being no real necessity for governing them, but only for maintaining such intercourse as would secure and develop the trade in furs. Therefore, there was no reason for locating permanent establishments on all of the coasts or upon all of the inlets. The fact that such establishments were not created does not show any disposition on the part of Russia not to assert sovereignty, nor is it any evidence that Russia did not understand that all of those waters and coasts were within her territory. Her understanding on this point had been abundantly shown by the maps which she published from 1825 down to 1866.

The evidence does sufficiently establish her understanding in accordance with the expression given to it by the maps. In 1842 Russia created the dignity of Supreme Chief of the Kolosches. The name of Kolosches was given generally to the tribes inhabiting the northwestern shore and included those on the Taku and the Chilkat.^a

During the ten years following the Treaty of 1824 the Russians, Americans and English all traded with the natives, and the Russians and English traded with them in common for another year under the Treaty of 1825. It must be borne in mind that during the period of this concurrent trading, the Americans and English traded with the natives, as inhabitants of Russian territory, and by virtue of special treaty rights given for a limited period. After the expiration of the trading privileges under the treaty, in 1838, Russia had the Chilkat River surveyed.^b

^a U. S. C. App., 316.

^b U. S. C. App., 312, 516, No. 45.

FROM 1840 TO THE AMERICAN PURCHASE, THE HUDSON'S BAY COMPANY HELD ALL OF THE WATERS AND COASTS IN DISPUTE FOR RUSSIA. THIS HOLDING WAS BEGUN AND CONTINUED WITH THE KNOWLEDGE AND CONSENT OF GREAT BRITAIN, WHICH THEREBY INDICATED THAT SHE UNDERSTOOD THAT UNDER THE TREATY OF 1825 THEY WERE TO BELONG TO RUSSIA.

On February 6, 1839, the Russian-American Company, by the consent of Russia, leased to the Hudson's Bay Company, from June 1, 1840, for a term of ten years, for commercial purposes, "the Coast exclusive of the Islands, and the Interior Country belonging to His Majesty the Emperor of Russia, situated between Cape Spencer, forming the North West Headland of the entrance of Cross Sound and Latitude 54° 40' or thereabouts, say the whole mainland coast and Interior country belonging to Russia, together with the free navigation and trade of the waters of that Coast and Interior Country."^a

The lease is of "the coast and the interior country belonging to His Majesty the Emperor of Russia." It is "the whole mainland coast," and "the waters of that coast" and "the free navigation and trade of the waters of that coast."

The lease further provides that "the Russian-American Company shall abandon every station and trading establishment on that Coast and in the Interior Country * * * they now occupy, and shall not form any station or trading establishment during the said term of ten years nor send officers, servants, vessels or craft of any description for the purpose of trade 'into any of the Bays, Inlets, Estuaries, rivers or lakes in that line of Coast and in that Interior Country.'" The Russian-American Company had exclusive rights as to all Russian territory, and for the period named it yielded these rights to its lessee as to all of that coast and its bays, inlets, etc. These fresh waters in the strip belonging to Russia were greatly desired by the Hudson's Bay Company for controlling the trade in beaver skins, the most valuable trade then existing in that region.^b

There is no doubt as to what coast and interior waters were understood to be embraced in the lease. The lease was negotiated for the Hudson's Bay Company by George Simpson, who was its chief representative when it went into possession under the lease, and had been for some time antedating the treaty of 1825, with which he was perfectly familiar.

^aB. C. App., 150.

^bU. S. C. C., App. 43.

In 1847, in an account of a visit made by him to this territory, and referring to the lease, he said that Russia possessed on the mainland between latitude 54° 40' and 60° a strip, and that this strip, in the absence of a lease, rendered the interior comparatively useless to England^a. Thus he understood that Russia owned a continuous strip not separated by inlets, and that the inlets did not belong to Great Britain.

On September 13, 1849, Sir J. H. Pelly transmitted a map to Earl Grey, saying:

" . . . I have now the honor to forward to you a statement of the rights as to territory, trade, taxation and government claimed and exercised by the Hudson's Bay Company on the Continent of North America, accompanied with a map of North America on which the territories claimed by the Hudson's Bay Company, in virtue of the charter granted to them by King Charles II. are coloured green, the other British territories pink, and those of Russia yellow."^b

This was written while the Hudson's Bay Company was in possession of the *lisière* under the lease.

This map is No. 19 in the British Atlas, and shows the Russian possessions, as including all of the bays and inlets. This letter was published in the parliamentary papers, House of Commons, and the map shows on its face that it was published by order of the House of Commons, July 12, 1850.

In 1857, before a committee of the House of Commons, Sir George Simpson testified that he administered a portion of the territory which belonged to Russia, which he described as a margin of coast marked yellow on the map from 54° 40' up to Cross Sound. He said that it was "the whole of that strip which is included between the British territory and the sea," that is, so much of the strip as was between Port Simpson and Cross Sound. He showed also that he had the whole care of it and that there were no Russian officers in the territory. This fact, taken in connection with the agreement with the Russian-American Company not to send officers or vessels into that territory during the term of the lease, accounts for paucity of evidence of special occupation by Russia, for the lease was continued down to the time of

^a U. S. C. App. 318.

^b U. S. C. C. App., 253.

the American purchase. The map referred to is No. 35 in the Atlas of the United States, and shows the boundary line drawn from near the head of Portland Channel around the heads of all the bays and inlets. These were the "waters of that coast" which passed under the lease. The "margin of coast marked yellow on the map from 54° 40' up to Cross Sound" showed the coast that passed under the lease.

From the making of the lease to the time he gave his testimony, a period of seventeen years, the company of which he had all along been chief representative, held all of these waters and all of these coasts under the lease which was made by the express authority of the Russian government. Whatever may be said about the width of the interior country intended to pass under the lease, however that may vary, there is no room for doubt or variation as to the coasts and the bays and inlets. The Hudson's Bay Company attorned to Russia's lessee and held all of them under Russia from 1840 until they were surrendered to the United States in 1867.

There was no holding for Great Britain, and the testimony taken by the committee of the House of Commons shows that Great Britain so understood it. James W. Keen, an employe of the Hudson's Bay Company from 1858 to 1863, shows that all of the inlets and bays were always considered by the Hudson's Bay Company's employees as Russian territory.^a

Great Britain knew of the lease, had been pressing for the Hudson's Bay Company a claim for indemnity on account of the Dryad affair, and ceased to press it when the lease was made. In 1854, during the Crimean War, on account of the relations brought about by the lease, Great Britain agreed with Russia to neutrality^b on the Northwest Coast.

Great Britain was advised that the entire coast and all the interior waters were being held and had been held for seventeen years under and for the sovereignty of Russia. These were the same waters and the same coasts claimed by Russia in her maps and shown by Great Britain in her maps as belonging to Russia.

It is not necessary, to sustain the argument on this question for the United States, to maintain either that Great Britain approved the lease or that the Hudson's Bay Company was clothed by her with

^a U. S. C. C. App., 228.

^b U. S. C. C. App., 14, 18, 44.

such agency as would bind her in such a matter. The inquiry pursued is as to the original and effective understanding of the parties as shown by their acts. Russia expressly sanctioned the lease and sanctioned its renewal.^a She understood that throughout this entire time and in accordance with the rights secured to her by the Treaty of 1825, her sub-tenant was holding for her all of the interior waters and the coasts now in dispute. This was a holding by Russia, through her tenant, and was her interpretation of her rights under the treaty that, wherever the line might actually be located on the ground in the interior, she had acquired exclusive sovereignty over all of this coast and all of these waters. This was the understanding of her tenant, and it is clear that all of the coast and waters were held for Russia and that no part of any of them was held for Great Britain. Great Britain was fully advised of all of this ten years before the purchase by the United States. When the knowledge was brought home to her in the clear and full way that it was by Sir George Simpson, that all the coast and all the waters now in controversy had been held by British subjects for Russia for seventeen years, she was, if she was not ready to concede that she had no claim to any of them, called on to speak. She not only did not protest, but permitted this tenancy to continue until it was terminated by the American purchase, and continued to issue her official maps declaring that all of these waters and coasts were within Russian territory.

It was not possible for Great Britain, except by an explicit, affirmative, direct declaration to Russia, to indicate in a more unmistakable way that she concurred in the understanding thus expressed by Russia, of which notice was brought home to her that, under the treaty Russia was at all events to have a continuous *lisière* around the heads of all interior waters.

^a U. S. C. C., App. 14.

THE UNITED STATES PURCHASED ALASKA WITH THE UNDERSTANDING ON ITS PART AND WITH A KNOWLEDGE OF THE UNDERSTANDING INDICATED BY THE CONDUCT OF GREAT BRITAIN THAT RUSSIA, UNDER THE TREATY OF 1825, OWNED ALL OF THE WATERS AND COASTS NOW IN DISPUTE, AND HAS HELD THEM WITH THAT UNDERSTANDING WITHOUT ANY PROTEST FROM GREAT BRITAIN, DOWN TO THE BEGINNING OF THE PRESENT CONTROVERSY.

THE AMERICAN PURCHASE.

The United States Government understood that under, Art. IV of the Treaty of 1824, its citizens had a right to trade for ten years along that part of the northwest coast that had been covered by the Russian ukase north of $54^{\circ} 40'$ and the interior waters thereof, and that the subjects of Great Britain acquired exactly the same rights to exactly the same waters and coasts by the Treaty of 1825.

They were at the termination of the ten years excluded by Russia and not by Great Britain. The maps of Russia and Great Britain delimiting their adjacent territories, repeatedly put forth, were of common knowledge. They had been uniformly followed by the leading cartographers of the world. There could not be a doubt in the mind of any person giving attention to the subject that from 1826 to 1867 Russia openly, notoriously, continuously, and adversely, without challenge from any government, asserted territorial jurisdiction over all of the interior waters now in dispute and their coasts.

In 1845 the Department of State recommended to American vessels not "to frequent the interior seas, gulfs, harbors and creeks upon that coast at any point north of latitude $54^{\circ} 40'$."^a

This was done on account of an official notification of Russia and in recognition of her sovereignty over those waters.

The nature of the Russian claim and occupation under the treaty was a matter of notoriety in Canada. In an editorial in the "Colonist," published in 1863 at Victoria, it was said that the strip of land stretching from Portland Canal to Mt. Saint Elias, with a breadth of 30 miles, "must eventually become the property of Great Britain, either as a direct result of the development of gold,

^a U. S. C. App., 250.

or for reasons which are now yet in the beginning, but whose results are certain." It was added that this thirty-mile strip should not "forever control the entrance to our very extensive northern territory."^a

There is reason to believe that the Russian Minister during the negotiations for a sale showed to Mr. Sumner, Chairman of the Senate Committee on Foreign Relations, what was proposed to be sold, by exhibiting to him a map of the Russian Empire, showing the boundary lines substantially as now claimed by America and certainly extending around the heads of all bays and inlets with a continuous *lisière*.^b

Russia sold in good faith after an undisputed claim of all these waters and coasts for forty-two years. The United States, relying upon the terms of the Treaty of 1825, which was expressly referred to in the cession and upon the interpretation put upon it by Russia, which was not merely acquiesced in, after full notice shown to have been brought directly to the attention of the House of Commons, but actively affirmed repeatedly by Great Britain in its official maps, concluded the purchase and paid the consideration in good faith, and without anything having been done to indicate even the possible existence of a controversy in regard to the rights to any of those waters. If Great Britain had any reserved interpretation as to the meaning of the word "coast" upon which she could found any claim, such as is now made, to any of the coasts and waters, then upon every principle of good faith she was called on to speak. There is not a fact now known upon which such interpretation is sought, that was not known just as well at that time. Her silence cannot but be regarded as another evidence that she then continued to interpret the treaty exactly as she had always done, so far as her outward acts had indicated, in respect of the coasts and interior waters.

The United States on this question asks no more than what the understanding manifested by Great Britain demonstrated.

AMERICAN OCCUPATION.

By ARMY AND NAVY.—The Treaty was concluded March 30, 1867. On October 18, 1867, formal transfer was made at New Archangel.^c

^aU. S. C. App., 322.

^cU. S. C. App., 330, 334, 335.

^bU. S. C. App., 513, No. 18.

On the same day Captain Howard, in command of a revenue cutter at the mouth of the Chilkat, which in his official report he says was "the terminus of the Hudson Bay Company's trading in Russian possessions north," hoisted the United States flag and thus took formal possession of the coast at the head of Lynn Canal, part of the very coast and interior waters which, by the newly discovered interpretation now advanced by Great Britain, was more than fifty miles within British territory. He states that he sent for the head chief of the Chilkats and explained to him the transfer of sovereignty by Russia to the United States. He also says that there was present there on October 17th a pilot and interpreter of the Hudson's Bay Company, who came to his ship flying the flag of that company and wearing the full uniform of an English officer.^a

From that day to this the United States has constantly asserted and exercised jurisdiction over that coast and the adjacent waters.

In 1867 a Coast Survey expedition was sent to Alaska, and in the report a description was given of "the coast of Alaska" which included the mouth of the Taku River and the Chilkat, where an astronomical station of the United States Coast Survey was fixed.^b

In 1869 General Davis arrested the chief of the Chilkats and some of his fellows and confined them.^c In 1870 General Davis visited, in person, the Taku and Chilkat Rivers.^d

In 1869 the U. S. S. *Saginaw* made a cruise, stopping at Pyramid Harbor at the mouth of Chilkat River, and made plans of it.^e

In 1873 Rear Admiral Pennock on his flag-ship *Saranac* visited the anchorage off Chilkat village. In the same year he exercised his good offices to reconcile the chiefs of the Chilkat and Stikine tribes.^f

Rear Admiral Taylor states that in 1873 the *Saranac*, to which he was attached, was at the head of Lynn Canal, and that the chief of the Chilkat tribe visited the ship in company with several sub-chiefs, accepted the authority of the commander and signified that he considered himself a subject of the United States and recognized the jurisdiction of the United States over the Chilkat people and the territory occupied and claimed by them.^g

In 1875 General Howard, commanding the Department of the

^a U. S. C. App., 337, 338, 339.

^b U. S. C. App., 343.

^c U. S. C. App., 356, 362.

^d U. S. C. App., 357.

^e U. S. C. App., 362.

^f U. S. C. App., 362, 363.

^g U. S. C. App., 407.

Columbia, inspected the mouth of the Chilkat River and the region around it.^a

In 1879 Captain Beardslee, who was instructed to restore and establish harmonious relations between white settlers and the native Indians, reported that the chiefs of the Chilkat and Chilkoot tribes had removed all prohibitions against white men entering that territory.^b In 1880 he fitted out an expedition of miners to that country, sending one of his officers in charge, and made a tour among the prominent Indian tribes, visiting the Chilkat and Chilkoot country and proceeding up Lynn Canal. He arranged a conference in which the Chilkoot chiefs came in a canoe flying the American flag, and in this conference reviewed the relations between the Indians and whites and told of the purchase of Alaska by the United States from Russia.^c

In that year he located the Chilkat villages, finding that they were beyond doubt in United States territory, and he also obtained a census of the Chilkats and Chilkoots. Surveys were made of Taiya Inlet, and river.^d

In 1881 Commander Glass, who succeeded Captain Beardslee, reported a serious outbreak among the Chilkats in which several Indians had been killed, and that he sent an officer to the principal village with a party of marines to investigate the affair, directing him to put a stop to the fighting.^e

In 1881, Commander Lull sent for the Chilkat chiefs and reconciled some differences between them.^f

In 1881, Commanders Lull and Nichols gave certificates to Klukmat, Donowock and Klanat by which they were recognized as Chilkat chiefs.^g

Admiral Coghlan, who visited the head of Lynn Canal in 1884, states that he visited both heads of the canal, placed a buoy near Haines Mission, treated Chilkat and Chilkoot Inlets as part of the United States territory and that the authority of the United States was not questioned by any one there.^h

In 1885 Commander Nichols wrote to Donnawaak and Clanatt and the Chilkat Indians saying that he held the chiefs of the tribe and the head men of families responsible for the good conduct of

^a U. S. C. App., 360.

^b U. S. C. App., 365.

^c U. S. C. App., 365, 374.

^d U. S. C. App., 374.

^e U. S. C. App., 380.

^f U. S. C. App., 382.

^g U. S. C. App., 213; U. S. C. App., 429.

^h U. S. C. App., 401-402.

their people, and that the white chief who governed the whole country was angry with them for their ill-treatment of peaceful people passing through their country. He warned them that thereafter he would punish the offenders to the full extent of the law.^a

In 1886 U. S. S. *Pinta* was stationed at Chilkoot Inlet from April 27th to June 18th. In May and June, 1887, the *Pinta* was at Chilkoot Inlet, the head of Taiya Inlet and Chilkat Inlet.^b

In 1887 the commanding officer of the *Pinta* had an interview with the Chilkats, including two chiefs, took his vessel to the head of Chilkat Inlet and informed the Indians that they could make their own bargains and work or not work, but that they could not interfere with or prevent whites from passing through the country over the trail.^c In the same year he sent an officer to Klukwan, the head village of the Chilkat Indians.^d In June, 1887, he reported that his vessel went to Chilkoot Inlet and Taiya Inlet, where it remained from May 26th until June 8th.^e He shows in this report that he met a Canadian survey party under Mr. W. Ogilvie and that Mr. Ogilvie, having previously asked his permission, "worked across the portage to Portage Cove; thence up Taiya Inlet, intending to follow the Indian trail over the mountains to the Yukon," etc.^f

Mr. Ogilvie, in his report to his government, speaking of the commander of the *Pinta* who interfered in his behalf in an affair with the chief of the Chilkoot Indians, said:

Commander Newell told him I had a permit from the Great Father at Washington to pass through his country safely, that he would see that I did so, and if the Indians interfered with me, they would be punished for doing so.^g

The statement that Mr. Ogilvie surveyed at the head of Lynn Canal by consent of the United States is confirmed by the testimony of Ripinski.^h

In a report transmitted in 1887 by Lieutenant Newell, it is shown that there was absolute domination by the United States of the

^aU. S. C. App., 430.

^bU. S. C. App., 383, 391.

^cU. S. C. App., 385.

^dU. S. C. App., 386, 387.

^eU. S. C. App., 391.

^fU. S. C. C. App., 216.

^gU. S. C. C. App., 218.

NOTE. In the U. S. Counter Case, page 79, it is stated that in 1887 Dr. Dawson met Mr. Ogilvie at Haines on Lynn Canal. They both visited the point named in 1887, but at different times.

Indian situation, and that the coast and interior Indians understood that the respective territories of Great Britain and the United States were divided by a line drawn about the Chilkoot Pass, which Schwatka called Perrier Pass.^a This report also shows that a chief of the Chilkoot tribe asked "an opinion from the court as to the right of his tribe upon the subjects referred to in his statement," which statement was as to the ownership of the trail. In March, 1888, the U. S. District Attorney gave an opinion as to these rights.^b

The extracts from logs of United States vessels on duty in Alaskan waters extending from 1873 to 1891 inclusive, show repeated operations at the head of the Lynn Canal, and that the closest relations were maintained between the commanders of such vessels and the chiefs of the Chilkat and Chilkoot tribes.^c

Lieutenant Commander Dombaugh states that from 1884 and 1886 the commanding officer of the *Pinta* was recognized as in authority by the Indians residing on the continental shores from Port Simpson to the head of the Taiya Inlet, and by the Chilkats and Chilkoots above Lynn Canal.^d

Lieutenant Stewart, who was on duty in Alaska from 1884 to 1886, was personally sent to Taiya several times to preserve order between Indians and miners.^e

Lieutenant Emmons, in an elaborate report, shows in substance that he was in Southeastern Alaska from 1882 to 1903, with intervals of absence, and that the men-of-war to which he was attached cruised continually along the mainland coast of Alaska and the outlying islands of the Alexander Archipelago, from Portland Channel and Dixon Entrance, to the head of Lynn Canal, visiting all of the inlets along the coast, in order to preserve order among both whites and natives, and to enforce the laws of the United States. He states that the absolute jurisdiction of the United States over the inlets and arms of the sea to the head of Lynn Canal and its inlets was never to his knowledge questioned by the whites of any nationality or the natives resident within those limits.^f

He further states that during the summer of each year of his service in Alaska, from 1882 to 1896, it was customary for a naval vessel to visit the head of Lynn Canal and spend more or less time

^a U. S. C. App., 392-394.

^d U. S. C. App., 400.

^b U. S. C. App., 392, 395, 396.

^e U. S. C. App., 401.

^c U. S. C. App., 397.

^f U. S. C. App., 402.

at anchor in Portage Bay, Pyramid Harbor and Taiya Inlet, and that in 1886 the *Pinta* spent thirty-five days in those waters and maintained an active supervision at the head of Taiya Inlet.

UNDER REVENUE OFFICERS. — In 1868 a statute was passed extending the laws of the United States relating to customs, commerce and navigation over the lands and waters of territory ceded to the United States by Russia under the Treaty of 1867.^a

As has already been shown, the Lincoln hoisted the American flag at the head of Lynn Canal and took possession of that territory on the same day that the transfer was made at Sitka.

From that time, without the right being questioned until this controversy arose, the revenue laws of the United States have been administered in the territory, including all of the waters and coasts now in dispute. The steamers of the revenue service have made annual visits to the coast in question since 1867, entering all the inlets and arms of the sea to the head of navigation, for the purpose of protecting the revenue, enforcing the United States laws and preserving peace and order among the natives.^b

In 1868 the Revenue Steamer *Wayanda* cruised through the entire inland waters of Alaska, stopping at all Indian settlements on Lynn Canal, including Taiya Inlet, Chilkat Inlet and Berners Bay, and also cruised in Taku Inlet. At all places it was explained to the Indians that the country had been purchased from Russia and that they were under the jurisdiction of the United States. Complaints were heard against chiefs and some of them were removed, and the people were directed to choose successors, which was done.^c

In the same year, as stated by Captain M. A. Healy, the United States exercised the right of searching all vessels engaged in domestic trade in all waters and bays to the head of Lynn Canal.^d

In 1880 all foreign vessels were forbidden to unload at Chilkat.^e

In 1890 a Collector of Customs was appointed for Chilkat and a customs office was established there.^f

In 1891, through the Inspector at Chilkat, that tribe appealed to the United States government to set aside a reservation for it.^g

^a U. S. C. App., 510.

^e U. S. C. App., 455.

^b U. S. C. App., 447.

^f U. S. C. App., 455-458.

^c U. S. C. App., 470-474, 475, 476.

^g U. S. C. App., 459.

^d U. S. C. App., 478.

In 1895 illicit liquor was seized and destroyed by a revenue officer of the United States at a mountain divide above Taiya.^a

In 1898 a deputy collector was appointed for Taiya, in 1899 one was appointed for Skagway, and in 1900 one was appointed for White Pass.^b

UNDER CIVIL GOVERNMENT.—On May 17, 1884, an Act was passed providing a civil government for Alaska. It authorized the appointment of a Governor, the establishment of a district court with the usual officers and the appointment of four commissioners. The temporary seat of government was fixed at Sitka. The court was clothed with the civil and criminal jurisdiction of district courts of the United States, and the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts. It was provided that one term should be held each year at Sitka and one at Wrangell, and that special sessions might be held when necessary. The clerk was made *ex officio* recorder of deeds and mortgages and certificates of location of mining claims and other contracts relating to real estate. The commissioners were clothed with the jurisdiction and powers of commissioners of the United States circuit courts. The marshal was clothed with the general authority of United States marshals and was charged with the execution of all process. The general laws of the State of Oregon, so far as applicable, were extended over that territory.

By section 8, Alaska was created a land district. Parties who had located mines or mineral privileges were allowed to perfect their title. The occupancy of religious societies at missionary stations was confirmed. Commissioners were charged with the duty of examining into and reporting upon the condition of the Indians residing within the territory. The Secretary of the Interior was directed to provide for education and an appropriation was made therefor.^c

Governors were appointed from time to time and the court was organized and has been continuously maintained. Marshals, clerks, commissioners and land office officials have been continuously in office from that time to the present time. Such officers have up

^a U. S. C. App., 416, 424, 428, 431, and 461.

^b U. S. C. App., 448.

^c U. S. C. App., 510; U. S. Stat., Vol. 23, 24-28.

to the present time continuously exercised and maintained unquestioned jurisdiction over every part of the coasts and waters now in dispute.

The United States mineral laws were extended to Alaska and in 1895 mining regulations were made for the district by the Secretary of the Interior and approved by the President.^a

Mineral locations were made in 1885 on Berners Bay and in 1886 on Lynn Canal, twelve miles north of Berners Bay, and were subsequently patented.^b

In 1886 Governor Swineford arrested a Chilkat chief for assaulting Archbishop Sagers.^c

The records in the Department of Justice show particular instances from 1887 to 1894, inclusive, of persons proceeded against criminally for acts done variously on Berners Bay, at Chilkoot, Chilkat, on Chilkat River, and at Taiya. Some of the defendants were Indians, one of them being an Indian chief, and some were white.^d

There are numerous depositions showing the exercise of civil and criminal jurisdiction in and about the country bordering upon Lynn Canal, Chilkat Inlet and Chilkoot Inlet, and as far inland as the summits of the passes of the mountains next to them, from 1884 to the present time.^e

The natives in and about Haines, commonly known as Portage Cove, the head of Lynn Canal, Chilkoot Inlet, Chilkat Inlet, and on the Chilkat River recognized the authority and jurisdiction of the United States over all that country.^f

Don-a-wak, a chief of the Chilkats, was appointed by the United States authorities an Indian policeman in 1892, exercised the duties of a peace officer among his people, and caused arrests to be made.^g

There are a number of depositions of those who lived for a long period in and about the head of Lynn Canal, who testify that at no time did any government other than the United States exercise

^a U. S. C. App., 493.

^b U. S. C. App., 494.

^c U. S. C. App., 483.

^d U. S. C. App., 407-413.

^e U. S. C. App., 415, 416, 422-428, 432, 434, 436, 438-441, 446; U. S. C. C. App., 217-220; 222-227; 230-231; 233-235.

^f U. S. C. App., 427-8; 436-437; 438; 441-442; 443; 543-550.

^g U. S. C. App., 427-8.

any authority or jurisdiction in and about that region, and that they have never heard any question by Canadian or British authorities of the sovereignty of the United States over the waters and coasts about the head of Lynn Canal.^a

SCHOOLS AND MISSIONS.—In 1880 a school was opened among the Chilkats under the auspices of Americans, which in 1882 had seventy pupils.^b

In 1881 a Presbyterian Mission School was established on Portage Bay near the head of Lynn Canal, at a place afterwards named Haines. It was always understood by those engaged in this work that the place where this school was located was a part of the United States.^c

In 1884 the location of this mission was recorded at Juneau.^d

In 1885 Rev. Sheldon Jackson was appointed General Agent of the Department of the Interior for the purpose of establishing schools in Alaska.^e

In 1885 a public school was opened at Haines and has continued in operation until the present time.^f

In 1888 Gov. Swineford reported that there were thirteen schools in operation in Alaska, one of them being at Chilkat.^g

In 1892 Governor Knapp reported that:

The Chilkat district is an important one, containing three canneries, several mines, a mission and government school, and half a dozen or such a matter of stores and trading establishments.^h

REPORTS OF GOVERNORS OF ALASKA.—Much comfort seems to be taken in the Counter Case of Great Britain, p. 77, from the reports of the Governors of Alaska from 1884 to 1902, and a quotation is made from that of 1888 in which the Governor wrote that "the civil government of Alaska is little, if any, better than a burlesque, both in form and substance." For the purposes of this argument it may be admitted that the government was insufficient, but no one would have a right to take exceptions to that except a citizen of the

^a U. S. C. App., 431, 416-417; 417-422; 425-427; 432-434; 441-442; 446; U. S. C. App., 217-220; 220-221; 222-227; 230-231.

^b U. S. C. App., 488 and 506.

^c U. S. C. App., 481; 436-437.

^d U. S. C. App., 437.

^e U. S. C. App., 481.

^f U. S. C. App., 480.

^g U. S. C. App., 484.

^h U. S. C. App., 486.

United States. Certainly Great Britain was not affected in its rights by anything complained of in the messages referred to. Governor Swineford complained on account of a lack of transportation facilities for governing satisfactorily a territory "with a coast line greater than that of all the Atlantic, Pacific and Gulf States combined."^a He was not renouncing, on behalf of the United States, jurisdiction over any of this coast line. He also complained of the non-enforcement of the liquor laws and the fact that Alaska was for seventeen years without any civil government. It will hardly be contended that the establishment of a civil government was a condition precedent to the manifestation by the United States, by occupancy, of its understanding as to what waters and coasts it acquired from Russia. He complained of lawlessness upon the part of individuals, but in no instance of any encroachments upon the part of Great Britain.

In his report of 1886 he points out the neglect to educate the creoles.^b

In 1887 he attacks the administration of the Alaska Commercial Company, and again refers to violations of the criminal law.^c

In 1888 he points out that proper provision had not been made for acquiring title to land. In this report he again calls attention to the abuses by the Alaska Commercial Company. In referring to the territory under him, he speaks of the Chilkats located on the Chilkat River at and around the head of Chilkoot Inlet and their claim of exclusive ownership of the trail leading from the tide-water to the Yukon River. It is from this report that the quotation in the British Counter Case is made. He is made to say that "the civil government of Alaska is little, if any, better than a burlesque, both in form and substance"^d

The quotation is of a part of a sentence which in its entirety reads as follows:

Aside from the partial administration of justice by the United States District Court and before United States commissioners acting principally as justices of the peace, the civil government of Alaska is little, if any, better than a burlesque both in form and substance.^d

His strictures apply to that part of the civil government under him. He does not undertake to show that the administration of

^a B. C. C. App., 19.

^b B. C. C. App., 20.

^c B. C. C. App., 21.

^d B. C. C. App., 23.

justice by the courts and the maintenance of jurisdiction by the United States in and about the head of Lynn Canal was either partial or ineffective. It is abundantly shown in this record that such jurisdiction has been constantly exercised from 1884 down to the present time in all that region. The Governor indulged freely in the ordinary right of an American citizen to criticise his own government, which took its rise from criticism, protest and revolution. He would have been very far from renouncing any of its jurisdiction.

The extracts from the reports of the other governors which appear on pages 22 to 36 of the Appendix to the British Counter Case are of the same character.

Opinions expressed by officials and citizens of the United States in public prints as to the condition of Alaska since the American purchase, appear on pages 36 to 44 of the Appendix to the British Counter Case. They are certainly not flattering to the United States. While they may afford satisfaction to those exhibiting them, and giving them such prominence, the deduction to be drawn from them may not be so pleasing. They apply to territory now in dispute, or else there would be no shadow of excuse for bringing them forward. They just as certainly prove that all of their authors, whose writings extend over a period from 1871 to 1898, inclusive, regarded the territory as belonging to the United States, for the burden of all of them is the responsibility of the United States for the deplorable conditions so feelingly depicted.

They did not charge any of the responsibility to Great Britain and were not speaking of British territory.

As much or even more might be found arraigning Great Britain for its administration of Canadian affairs at early periods, or the United States for its administration of the Philippines, but such arraignments, instead of negating jurisdiction and sovereignty, find their *raison d'être* in the fact of sovereignty.

UNITED STATES CENSUS.—In 1880 a census was taken of the Alaskan Indians, and among those enumerated by the United States officials were the Chilkats and Chilkoots, the village of Klukwan being included in the census.^a

^aU. S. C. App., 489.

In 1890 a census was taken which included those living on Berners Bay, at Chilkat, Chilkoot, Klukwan and Pyramid Harbor.^a

POSTOFFICE.—A postoffice was established at Haines, July 22, 1882.^b

UNITED STATES MAPS.

In 1867 an official map was published by the United States, prepared at the suggestion and partly under the supervision of Senator Sumner, showing the boundary line substantially as it had been uniformly drawn on the official maps of Russia and of Great Britain down to that time and so as to include all of the coasts and waters now in dispute in United States territory.^c Five hundred copies of this map were printed at first, and there was a second edition issued in the same year.^d

There has never been any material change, so far as this boundary line is concerned, in the official maps of the United States.

BRITISH AND CANADIAN MAPS AFTER 1867.

In 1868 was published the Journal of the Royal Geographical Society of London, which contained a map entitled "Map of British Columbia, reduced from the original Map by Mr. Alfred Waddington." This map shows the boundary line so drawn as to place all of the waters and coasts in dispute in United States territory. The high authority of the society publishing it and the place whence it emanated are sufficient warrant for mentioning it.

The British Colonial Office List for the years 1869 to 1902, inclusive, contains maps showing the Alaska *lisière* substantially as claimed by the United States. In the issue of 1901 there appeared at the foot of the title page the following:

"This list, though compiled from official records, is not an official publication."

There does not appear to have been any such disclaimer for any of the previous years.^e

Reference is again made to British Admiralty Chart 787, published in 1877, and already cited on p. 142.

In 1878 there was published by the Dominion Land Office a map entitled "Tracing of part of 'Alaska,' showing 'Stakeen River,' from U. S. Coast Survey of 1869." This shows the boundary line crossing the Iskoot and Stikine and Taku rivers. The map does

^a U. S. C. App., 490.

^b U. S. C. App., 496.

^c U. S. Atlas, No. 24.

^d U. S. C. App., 541.

^e U. S. C. C. App., 245.

not show much territory north of Taku River, but it plainly shows the trend of the boundary line so as to put all of Lynn Canal in Alaska.^a

In 1878 was published an official map of Canada, by the Minister of the Interior, showing the boundary line laid down as on the previous maps.^b

In 1882 and 1883 official maps were published by the Department of Railways, of the Dominion of Canada and the Province of Quebec, respectively, showing a similar boundary line.^c

In 1884 was published a "Map of the Province of British Columbia," by direction of the Chief Commissioner of Lands and Works, which shows the line so drawn as to put all of the coasts and waters in question in Alaska, and lettered "Approximate International Boundary by Convention between Great Britain and Russia, 1825."^d

In the same year was published a Canadian geological map laying down the line in the same way.^e

In 1894 was published by Johnston, Geographer to the Queen, a map of the Dominion of Canada, which also laid down a like boundary line.^f

THE DAWSON MAP OF 1887.—The first map which showed a departure from the interpretation as to a continuous *lisière* around the heads of the bays and inlets, manifested by Russia and Great Britain down to the American purchase in 1867, and by the United States and Great Britain from that time on, which interpretation was accepted by the world at large, was what is designated as the "Dawson Map" of 1887.^g This map shows a line laid down in accordance with the contention of the United States. It also shows a line approximating the line now contended for by Great Britain. This line is labeled "Line approximately following the summits of mountains parallel to coast." These lines were no part of the original publication, and, therefore, even if the map was official as published, the lines constituted no part of such official publication. Lord Lansdowne, speaking of it, said:

As originally published it showed no boundary lines, but upon a few copies lines were drawn in ink by Dr. Dawson.^h

^a British Atlas, No. 27.

^b U. S. Atlas, No. 39.

^c U. S. Atlas, 42, 43.

^d British Atlas, No. 31.

^e British Atlas, No. 32.

^f U. S. Atlas, No. 45.

^g British Atlas, No. 34.

^h U. S. C. C. App., 159.

So far as shown, this line is the result of private enterprise. The first semblance of official endorsement was when Lord Lansdowne, in a letter of August 18, 1902, to Mr. Raikes, guardedly said:

That the line following the mountains parallel to the coast, crossing all the larger inlets, must at the time have been accepted as embodying the Canadian view of the meaning of the Treaty of 1825, is shown by the addition by the United States authorities to the *fac simile* (at the top and outside the border of the map) of the words "Dawson's Canadian Map, 1887, showing conventional lines proposed by Canada."^a

He does not say that Dawson's contention as to the line crossing all the larger inlets was the Canadian view, and much less does he say that it was at any time advanced as the view of Great Britain. His statement is purely argumentative as to its acceptance as such by the United States. It is unsound upon its face. The addition by the United States authorities specified "conventional lines proposed by Canada." The conventional line marked upon the map as such is far to the interior of the line drawn by Dawson crossing all of the larger inlets. Lord Lansdowne shows that the map only exhibits one of the conventional lines discussed during the conferences, and that it was not possible to draw the second conventional line, as this depended upon geographical details not determined at that time. Then how can it be urged that the addition by the United States, which referred alone to "conventional lines proposed by Canada," is evidence that at the time "the line following the mountains parallel to the coast, crossing all of the larger inlets, was accepted as embodying the Canadian view of the meaning of the Treaty of 1825"? Conventional lines were discussed with a view of fixing a line which did not correspond to the Treaty and which was to be adopted by a new agreement. No line spoken of as a conventional line would have been regarded as putting forward any theory of interpretation of the treaty. That Canada had not at that time adopted the Dawson theory is shown by the British Colonial Office List down to and including 1902, which is in direct conflict with the Dawson theory and in perfect accord with the theory of the United States.^b

In 1893 an official British Columbia map showed a line lettered "Approximate international boundary by Convention between Great Britain and Russia, 1825," which crossed Lynn Canal above Ber-

^a U. S. C. C. App., 159.

^b U. S. C. C. App. 245.

ners Bay, but did not adopt the Dawson theory, for it left the whole of Taku Inlet in United States territory.^a

In 1895 they grew a littler bolder and issued a map which appropriated all of Taku Inlet.^a Thus it was eight years after the publication of the Dawson map before any official map was issued based on a theory like his. As has been previously shown, no such change was ever made upon the maps published by Great Britain.

NOTHING WAS DONE ON THE PART OF GREAT BRITAIN UNTIL 1898 INDICATING A CLAIM, CONTRARY TO THE UNDERSTANDING WHICH SHE HAD PRIOR TO THAT TIME MANIFESTED THAT RUSSIA, UNDER THE TREATY OF 1825, WAS OWNER OF ALL THE WATERS AND COASTS NOW IN DISPUTE, AND THAT THE UNITED STATES HAD UNDER THE TREATY OF 1867 ACQUIRED ALL OF THEM FROM RUSSIA, AND NOTHING HAS EVER BEEN DONE BY THE UNITED STATES INDICATING A CONTRARY UNDERSTANDING.

PROPOSITIONS TO SURVEY.

An effort is made in the British Case to break the effect of the interpretation put upon the Treaty by Russia and Great Britain, as displayed by the conduct of both governments, down to the time of the purchase by the United States, and also the effect of the understanding shown by Great Britain and the United States subsequent to the purchase, by attempting to show that the occupation by the United States of the coast and waters in question was against protest, or while the question was *sub judice*.

It must be borne in mind that the inquiry now is as to the proper answer to the Fifth Question, and that nothing can be relevant unless it bears upon the interpretation put by the parties upon the Treaty in respect of its purpose to give or not to give to Russia a continuous *lisière* around the heads of all of the bays and inlets. The mere fact that there was an undetermined line is not significant. The mere fact that there were negotiations to determine where the line should be laid down in the interior has no bearing. Such things

^a U. S. Atlas, No. 28.

only are of importance which disclose the views of the parties one way or the other upon the point of inquiry.

The points made in the British Case will be considered in the order in which they are advanced.

NEGOTIATIONS FOR DELIMITATION OF BOUNDARY BEGUN IN NOVEMBER, 1872.

These negotiations began forty-seven years after the Treaty with Russia and five years after the United States took possession of the head of Lynn Canal. As shown, the government of the United States issued an official map in 1867, showing that the boundary ran somewhere on the land around the heads of all interior waters and approximately ten marine leagues therefrom. This map was substantially in accord with the British official maps down to the very year when this correspondence began, and all of these maps were in this respect like all of the official Russian and British maps from the time of the Treaty of 1825.

The correspondence was initiated by an address of the Legislative Assembly of British Columbia to Lieutenant Governor Trutch and a letter by him to the Secretary of State for the Provinces, July 11, 1872, in which he said:

The boundary line between the British Possessions in North America and the present United States Territory of Alaska—formerly Russian America—is laid down in the Convention of 1825, Articles 3 and 4.

But the description therein given of this line of demarcation is not so clearly defined as to render it readily traceable on the ground.

The initial point of this line on the mainland is debatable, and the line of demarcation thence following the summit of the coast range of mountains to the 141st meridian west, but limited, whenever such summit shall be found to be more than ten marine leagues from the ocean, to a line drawn parallel to the coast, and at a distance of ten marine leagues therefrom, following all the sinuosities thereof, cannot in practice be determined.

I therefore concur with my ministers in thinking that it is desirable that some more clearly marked or definitely ascertained line should be substituted for that described in the Convention above referred to.^a

He thinks that the difficulty is that the line is not so clearly defined "as to render it readily traceable on the ground." He understands that if the mountains fail, the line must be drawn "parallel to the coast and at a distance of ten marine leagues therefrom, following all the sinuosities thereof," and he further

^a B. C. App., 163.

regards such line as impracticable and urges that a substitute shall be adopted.

Surely he did not mean any such line or any such coast as is now contended for by Great Britain. He understood that "all the sinuosities" of the coast were to be followed.

It appears that an inquiry was made by Sir Edward Thornton of Secretary Fish as to whether or not the United States Government "would be willing to agree to an appointment of a Commission for the purpose of defining the boundary line," and that Mr. Fish replied that he was satisfied of the expediency of such a measure, but feared that Congress might not be willing to grant the necessary funds.^a

Mr. Fish, in a subsequent interview of November 16, 1872, said that the President was "so impressed with the advantage of having the boundary line laid down at once" that he was disposed to recommend it to Congress.^b

The proposition communicated to the United States was to appoint a Commission "for the purpose of defining the boundary line." Nothing was said by any one about interpretation of the Treaty or as to any doubt about what coast or waters were meant. The President spoke "of having the boundary line laid down."

In consonance with this view, in his message to Congress of December 2, 1872, he refers to "the actual line" and recommends the appointment of a Commission "to determine the line." He clearly meant the determination upon the ground of the actual line.^b

There is not the remotest suggestion that any question was mooted, as to the interpretation of the Treaty or as to the right of the United States to Lynn Canal, all of which had been entered upon and had been brought under the jurisdiction of the United States.

Sir Edward Thornton was advised, and in turn advised Earl Granville, that the message contemplated a Commission "for the purpose of laying down the boundary line."^b

The bill introduced into Congress was "for the purpose of surveying and marking the line of boundary," and there was no provision except for such practical work. A copy of this bill was sent to Earl Granville.^c

^a B. C. App., 164-165.

^c B. C. App., 166.

^b B. C. App., 165.

The British Government agreed to share in the expense of "determining and marking out the boundary line."^a

On February 15, 1873, Sir Edward Thornton wrote to Earl Granville that Mr. Fish informed him that the estimated expense to the United States alone was about a million and a half of dollars, and that it would require ten years, and that Mr. Fish said that the Engineer Department had expressed an opinion that,

under the present circumstances of the two countries it would be quite sufficient to decide upon some particular points, and the principal of these they suggested should be the head of the Portland Canal, the points where the boundary line crosses the Rivers Shoot, Stakeen, Taku, Iselcat, and Chelkaht, Mount St. Elias, and the points where the 141st degree of west longitude crosses the rivers Yuken and Porcupine.^b

The suggestion of Mr. Fish was in perfect harmony with what President Grant had said and what was contained in the Act introduced in Congress. It was wholly irreconcilable with the present contention of Great Britain. If any one authorized to speak or act for the Canadian Government or Great Britain entertained any idea at that time that the word "coast" in the treaty did not include all of the shores of all of the bays and inlets, he, so far as the United States was advised, kept it a profound secret.

On November 27, 1873, the Canadian authorities requested Captain Cameron to report upon the "cost and duration of the proposed survey" and transmitted to him an extract from the dispatch embodying the suggestions of Mr. Fish as to deciding upon "the points where the boundary line crosses the Rivers Shoot, Stikine, Taku, Iselcat, and Chelkaht."^c

In the official submission of this extract to Captain Cameron there was no reservation as to the line crossing these rivers.

On January 19, 1874, Lieutenant Governor Trutch wrote to the Canadian Secretary of State enclosing an address of the Legislative Assembly of the Province of British Columbia urging that immediate steps be taken "for having the boundary line between this province and Alaska established and defined."^d

Enclosed with it was a letter from the clerk of the Assembly to Lieutenant Governor Trutch transmitting a resolution of the House concluding as follows:

And, whereas, the boundary of the thirty-mile belt of American territory running along a part of the seaboard seriously affects vital questions bearing

^aB. C. App., 167.

^bB. C. App., 168.

^cB. C. App., 173.

^dU. S. C. C. App., 49.

upon navigation and commerce, be it therefore resolved, that a respectful address be presented to his Honor, the Lieutenant Governor, recommending him to urge upon the Federal Government the necessity of taking immediate steps for having the said boundary established and defined.^a

On February 18, 1874, Sir Edward Thornton transmitted to Captain Cameron a communication from Lord Tenterden furnishing him with certain documents in regard to the Alaska boundary. These documents embraced the Treaties of 1824, 1825 and 1867, and maps of the territory.^b

On February 17, 1874, J. S. Dennis, Surveyor General of Canada made a report to the Minister of the Interior, in which he shows that he had before him the extract covering the suggestion of Mr. Fish, the description of the boundary given in the treaty, and a tracing from the official map published by the Government of the United States "of the surveys of the northwest coast of the Pacific and showing the whole boundary from the head of the Portland Canal to the Arctic Ocean."^c

A part of this map is shown as No. 27 of the British Atlas. The boundary line crosses the Iskoot and Stikine Rivers and the Taku River about ten marine leagues from the head of Taku Inlet. The line where the map is discontinued is shown to proceed northwardly parallel with the coast and so as to include Lynn Canal.

With all of this information before him, Mr. Dennis said:

The undersigned is of opinion that it is unnecessary at present (and it may be for all time) to incur the expense of determining and marking any portion of the boundary under consideration other than at certain of the points mentioned in the extract alluded to in the dispatch from Sir Edward Thornton to the Earl of Granville, dated February 15, 1873, that is to say:

1. The head of the Portland Canal, or the intersection of the same by the 56th parallel of north latitude.
2. The crossing of the following rivers on the Pacific Coast by the said boundary, that is to say: The Rivers "Shoot," "Stakeen," "Taku," "Isikat," and "Chilkaht."^d

He further says:

And, further, the United States surveys of the coast could be advantageously used to locate the coast line in deciding the mouths of the rivers in question, as points from whence the necessary triangulation surveys should commence, in order to determine the ten marine leagues back, and might further be agreed on

^a U. S. C. C. App., 50.

^b U. S. C. C. App., 51.

^c B. C. App., 177.

^d B. C. App., 177-178.

and adopted by the Commissioners as affording the data which, in their discretion, might be used to regulate the direction and location of the boundary across the valleys of those rivers.

He, with the understanding of the United States clearly stated in accord with its present contention as to a continuous *lisière*, expresses himself as fully in accord with it, for he says that the "coast line" is at the mouths of Taku and Chilkat Rivers, and that from these points the measurement of the ten leagues back must be begun.

On February 18, 1875, Major Cameron submitted his report. It is admitted in the British Case that he was supplied with a copy of Sir Edward Thornton's dispatch and later with a memorandum made by Mr. J. S. Dennis, in which the cost of the survey suggested by Mr. Fish was discussed. The Case, however, omits all mention of the recommendation just shown to have been made by Mr. Dennis.^a

Major Cameron also had the written report prepared by General Humphreys, United States Chief of Engineers, in which, after reciting the course of the boundary line provided for by the Treaty, he, in view of the great cost of marking the line, suggests that certain points be fixed, mentioning, among others, the following:

To ascend the Stakcen, Takee, Chilkat, the Alsekh rivers, and fix the points of intersection with boundary line.^b

The British case quotes from Cameron's report as follows:

While the United States Government have indicated a definite plan of procedure, and named the points of the boundary which they consider it essential should be marked, the Government of Canada make no reference to such details, and, therefore, leave it to be assumed that they expect the terms of the Treaty to be fully and strictly carried out.

The cost of marking the line will be seriously affected by the view which may prevail on this subject.^c

This excerpt gives an entirely erroneous impression of the views entertained by Major Cameron as shown by his report. He also says:

The Treaty describes a line which, in its course northerly from Portland Channel to its intersection with the meridian of 141 west longitude, traverses a very mountainous and heavily wooded country, and defines it as following: "The summit of the mountains situated parallel to the coast," or, where moun-

^a B. C. 29.

^c B. C., 29-30.

^b U. S. C. C. App., 50-52.

tains are not within ten marine leagues of the sea, then "parallel to the windings of the coast" at no greater distance than ten leagues.

To carry out these terms it would be necessary to complete a survey of the belt of country between the coast line and mountain summits, about 900 miles in length, and occasionally, perhaps, ten marine leagues in breadth.

The coast line might furnish an exceptionally advantageous base for supplies; but notwithstanding this advantage the difficulties with which the surveying parties would have to contend in their progress inland, the necessarily circuitous course of their movements, and the extreme irregularity of the line to be marked—at times passing from mountain top to mountain top, at others repeating the meandering of a coast, broken by numerous bays, long, narrow inlets and river mouths—would be of the most serious description.^a

It is too clear for question that he here meant by "coast" the "coast" of the very bays and inlets now claimed by Great Britain.

He further says:

Principal depots should be established at Fort Simpson, at the mouth of Portland Channel, and at Fort Yukon, where Porcupine River joins the Yukon River, to meet the requirements of the expedition if the proposed alteration in the Treaty stipulation be not adopted. Should the alteration be approved, no principal depot would be needed at Fort Simpson, but, instead, one would have to be established at the head of navigation up Linn Channel. Here, too, winter quarters for the party, or a portion of it, might be most conveniently placed.^b

Why should he want to establish a depot at the head of Lynn Canal for the purpose of marking a line parallel to a coast line crossing Lynn Canal over fifty miles seaward of the head?

It cannot be assumed that Sir Edward Thornton was ignorant of the report of Mr. Dennis and Major Cameron. As shown, he had transmitted the suggestion of Mr. Fish as to the location of the boundary on certain rivers, which proposition could carry with it nothing less than an assumption that the United States owned all of the waters and coasts of the bays and inlets. On September 27, 1875, he reported to the Earl of Derby an interview between himself and Mr. Fish, in which he says:

I observed that when the question of laying down the boundary was discussed about two years ago, it was suggested that if the whole survey could not be made, the points where the territories met could be fixed on the rivers which run through both of them.^c

He did not intimate that he excepted any of the rivers that Mr. Fish had designated.

^a B. C. App., 181.

^b B. C. App., 182.

^c B. C. App., 183.

On the 21st of November, 1876, in a report of a committee of the Privy Council, approved by the Governor General and made to the Minister of the Interior, is included a memorandum from Mr. Mackenzie, referring to the desirability of having a complete or partial determination of the boundary line, and the Privy Council concurred in the memorandum. This memorandum is a review of the correspondence between the two governments in regard to the necessary steps to have the boundary determined and marked. It speaks throughout of "laying down the boundary line," and recites that Mr. Fish "had further stated that the Department had expressed an opinion that under the present circumstances of the two countries, it would be quite sufficient to decide on some particular points, and the principal of these it is suggested should be the head of the Portland Canal; the points where the boundary line crosses the Rivers Short, Stikine, Taku, Iselcat, and Chelbraht."^a

The memorandum concludes:

The undersigned recommends that Her Majesty's Government should again request the United States Government to join in a joint commission to determine on the points where the boundary intersects the Stikine River, and such other points of those mentioned by Mr. Fish in his communication to Sir Edward Thornton in February, 1873, as may be considered advisable, and that in the meantime the *status quo* should be maintained.^b

Thus it appears that the question of fixing the boundary had been under constant consideration from September 20, 1872, down to November 21, 1876, a period of more than four years, and that the suggestion made by Mr. Fish in 1872 as to determining the points where the boundary line crosses the rivers named had been repeatedly under consideration by the British representative at Washington, the Prime Minister, Privy Council and Surveyor General of Canada, and the Foreign Office in London. It further appears that so far from any suggestion being made that Great Britain was entitled to any of the waters and coasts, which would be necessarily left in American territory by fixing a boundary line on the rivers named, which waters and coasts include all of those now in controversy, the proposition of Mr. Fish was acquiesced in and was, as has been above shown, again recommended to be brought to the attention of the United States Government for its favorable action.

^a B. C. App., 189.

^b B. C. App., 191.

SURVEY OF STIKINE RIVER BY HUNTER AND ADOPTION OF PROVISIONAL LINE IN 1878.

The survey of the Stikine River was the subject-matter of a report made by Mr. Hunter in June, 1877.^a Referring to Hunter's survey, the British Case says:

"Having regard to the proviso subject to which this arrangement was accepted by the United States Government, Mr. Hunter's survey has no binding effect. The incident is, however, of importance in that it brought to the attention of the United States Government, the manner in which it was considered on the side of Great Britain the Treaty ought to be applied."^b

The purpose of this statement is involved in some doubt, but if it is meant to say that there was anything in Hunter's survey and report to indicate to the United States Government that the treaty ought to be applied in the way now sought, that is to say, by running the line along mountains parallel with a part of the coast, but perpendicular to the coasts of the bays and inlets, and so that in drawing the boundary line parallel to the sinuosities of the coast, as provided for in the treaty, it should be drawn parallel only to the general coast, cutting across the coasts of interior bays and inlets, leaving those waters in British territory, then the proposition is denied.

The instructions given to Mr. Hunter by Surveyor General Dennis were to proceed to the Stikine River for the purpose of surveying it and making a reconnaissance of the country embracing the coast range of mountains in the immediate vicinity, so as to ascertain the boundary on that river.^c Inasmuch as the mouth of the Stikine River was on the so-called general coast, and as Hunter's survey was confined to that river and the mountains crossing it, nothing whatever can be predicated on his survey in regard to what was the meaning of the word "coast" as applied to bays and inlets, and it is entirely inconsequential so far as the answer to the Fifth Question is concerned.

Certainly no such view was entertained by the British Government. On October 9th following the report, which was made in June, Mr. Plunkett, British Charge d'Affaires at Washington, in a

^a B. C. App., 226.

^b B. C., 34.

^c B. C. App., 224.

letter to Mr. Richards, Deputy Governor, said, speaking of the United States, that:

They should at least accept our proposal to fix certain spots where the rivers pass out of British into American territory.^a

This must have referred to the rivers which had been repeatedly mentioned in the previous correspondence. On October 1st of the same year, in a letter to Mr. Evarts, he said:

Sir Edward Thornton, in his note to Mr. Fish on the 15th of last January, acting on instructions received from the Earl of Derby, urged the United States government to unite in a joint commission to determine where the boundary intersects the Stikine River, and also such other points on the frontier as might be considered advisable.^a

Mr. Plunkett closed with the expression of the hope that steps might be taken if possible for calling the attention of Congress to this important question.

On December 6, 1877, a committee of the Privy Council, referring to the report of November 21, 1876,^b and of the recommendation made in its conclusion, added:

The points indicated by Mr. Fish were the head of the Portland Canal, the Rivers Iskoot, Stikine, Taku, Isalcat, and Chelkalit.^c

While the report of December 6, 1877, said that there was no urgency, except for fixing the boundary on the Stikine River, there was not the remotest dissent intimated from the accepted view that the boundary line would cross all the rivers named.

This report was submitted by the Earl of Dufferin to Sir Edward Thornton, and on December 13, 1877, Sir Edward Thornton advised the Earl of Dufferin that in consequence of the receipt of his despatch he called at the State Department, and, not finding the Secretary in, "spoke to Mr. Seward on the subject, and suggested that if Congress could not be induced to grant a sum of money to lay down the whole boundary, or even the points formerly indicated by Mr. Fish, at least a boundary upon each bank of the Stikine might be decided upon, with, perhaps, a few miles into the interior from each of those points."^d

The outcome of all this correspondence was a survey upon the Stikine and the adoption of a provisional line upon that river in 1878, with the proviso that it was not to affect Treaty rights.^e

^a B. C. App., 235.

^c B. C. App., 238.

^b B. C. App., 191.

^d B. C., App., 239.

^e B. C. App., 246.

The correspondence conclusively shows that down to its termination both governments treated the question upon the assumption that these rivers were crossed by the boundary line, and that the boundary line must in any event be drawn around the heads of all of the bays and inlets. From 1825 down to the inception of this correspondence the question of running it in any other way had never been directly or indirectly raised, either between Russia and Great Britain or between Great Britain and the United States. The interpretation of the Treaty had been made evident by acts of possession, and jurisdiction upon the part of Russia and the United States, which were never challenged by Great Britain, and by the affirmative declarations of all three of the governments through their official maps, and here, in negotiations extending throughout a period of more than four years bearing directly upon the question of fixing the boundary line, the minds of all parties were directed to a claim made by the United States which was wholly incompatible with the construction now sought to be put upon the Treaty by Great Britain. There was no protest or denial as to this claim, but it was accepted as a matter too clear for doubt, and there can be no question but that if the United States Government had appropriated the money the boundary would have been marked at that time upon these rivers so as to forever exclude the present dispute.

THE DALL-DAWSON CONFERENCE, 1888.

It is admitted in the British Case that:

no further communications of importance with respect to this subject took place between the two governments until 1884, *when the question entered on a new phase.*^a

Before considering this "new phase," it will be instructive to review what had been done in the way of occupation by the United States government under the "old phase," from the close of the correspondence in March, 1878, by which the line established by the Hunter survey was provisionally adopted on the Stikine River, with the understanding that such "arrangement in regard to the Alaska Boundary shall not be held to affect the treaty rights of either party,"^b down to the alleged "new phase," which was presented for the first time in the Dawson letter of February 7, 1888, to Sir Charles Tupper. This covers a period of ten years during

^a B. C., 34.

^b B. C. App., 246.

which Great Britain was absolutely silent after the reiterated mutual understanding that the boundary line crossed the Taku and Chilkat Rivers.

Such occupation may be briefly summarized as follows:

United States vessels every year of that period and frequently repeatedly during the year went to the head of Lynn Canal and exercised authority over the natives as subjects of the United States, which jurisdiction was recognized by the Indians.

The revenue service of the United States throughout that period was in effect over all of the coasts and waters in question.

During the year 1887 Mr. Ogilvie, in charge of a survey for the Canadian government, entered upon the work at the head of Lynn Canal, only after having asked and received permission of the American government.

In 1880 all foreign vessels were forbidden to unload at Chilkat, and this order was complied with without question.

In 1884 salmon canneries were established at Pyramid Harbor by United States citizens and on what was understood by them and United States officials to be United States territory.

In 1880 and 1881 schools were established near the head of Lynn Canal by United States citizens and under the auspices of the United States.

In 1883 the British Government, in compliance with its request therefor, received the annual reports of the United States Coast and Geodetic Survey for the years 1874 to 1879 inclusive,^a which showed that the coasts and waters in question were treated as United States territory.

In 1884 a civil government was established for Alaska, and Governors were appointed, who from that time, irrespective of the Dawson letter, exercised undisputed jurisdiction over all of the territory in question.

The United States mineral laws were extended to that territory in 1884, and in 1885 regulations were made covering all of the territory in question, and in the same year mineral locations were made on the east side of Berners Bay.

In 1886 a location was made on Lynn Canal twelve miles north of Berners Bay.

^aU. S. C. C. App., 88.

During that period the United States courts exercised unquestioned jurisdiction over all of that territory, and frequent arrests were made and Indians and others were prosecuted and imprisoned.

In 1883 a salmon cannery was constructed at Pyramid Harbor by American citizens, who recognized the United States government as having jurisdiction over that territory.

In that year 3,800 cases of salmon were canned by one company at Pyramid Harbor.

A census was taken of the Indians in 1880.

A postoffice was established at Haines in 1882.

In 1885 a public school was established at Haines by the Department of the Interior.

The United States, Canadian and British maps during this period declared that all of this territory belonged to the United States.

Throughout this time there was never a protest against the occupation by the United States, and its jurisdiction was never questioned. References for the facts stated in the foregoing summary have been given in previous parts of this argument.

The Dall-Dawson conference may be said to have been initiated by the letter of Mr. Dall to Mr. Dawson, April 24, 1884, in which he said:

The matter of the boundary should be stirred up. The language of the Treaty of 1825 is so indefinite that were the region included for any cause to become suddenly of evident value, or if any serious international question were to arise regarding jurisdiction, there would be no means of settling it by the Treaty. There being no natural boundary and the continuous range of mountains parallel to the coast shown on Vancouver's charts, like a long caterpillar having no existence as such, the United States would undoubtedly wish to fall back on the 'line parallel to the windings of the coast and which shall never exceed the distance of ten marine leagues therefrom' of the Treaty. It would of course be impracticable to trace any such winding line over that 'sea of mountains.' I should think that the bottom of the nearest valley parallel to the coast might perhaps be traced and its stream form a natural boundary; even then it would be difficult to determine the line between one valley and the next. Before the question has attained any importance, it should be referred to a committee of geographers, a survey should be made, and a new treaty should be made, stating determinable boundaries."

Mr. Dall then stated, what since has been incontestibly proved, that the range of mountains shown upon Vancouver's map, which

was the range in respect of which the negotiators proceeded in defining the boundary line, does not exist within ten marine leagues from the ocean. It is plain that in the absence of this range he understood that the line was to be drawn parallel to the sinuosities of all of the coast, including the bays and inlets, and that this would be a matter of such difficulty as to make it advisable to make a new treaty calling for a line less difficult to trace over that sea of mountains. There was nothing in his suggestion that gave any countenance whatever to the present contention of Great Britain that the line should be drawn so as to cut across the coast line. The difficulty which he foresaw was incident to drawing the line parallel to the sinuosities of all the coast. He recognized that the Treaty fixed such a line and did not propose to depart from it by putting a new interpretation upon the treaty, but by suggesting another treaty which would minimize these difficulties. His view of the line as fixed by the treaty was absolutely in accord with that advanced by Mr. Fish in his letter of January 10, 1877, to Sir Edward Thornton in which he said:

The absence of a line defined and marked on the surface of the earth as that of the limit or boundary between two countries cannot confer upon either a jurisdiction beyond the point where such line should in fact be. That is the boundary which the treaty makes the boundary; surveys make it certain and patent, but do not alter rights, or change rightful jurisdiction.^a

So far as the record shows Mr. Dawson did not answer Mr. Dall. It is said in the British Case that "the idea put forward by Mr. Dall was adopted by the Government of the United States."^b

That it was adopted by Mr. Bayard in his letter of November 20, 1885, to Mr. Phelps is true, but there is nothing whatever in that letter that gives any countenance to the present British contention or that intimates in the least that any interpretation could be put upon the treaty by which, either looking to the mountains or the coast line or both, a line could be drawn in accordance with the intent of the Treaty which would throw any part of the coast and waters now in question into British territory. On the contrary, the opposite view unmistakably appears from Mr. Bayard's letter.^c

He speaks of the treaty line as being "of uncertain, if not impos-

^a B. C. App., 198.

^b B. C., 34.

^c B. C. App., 248-253.

sible, location for a great part of its length." but it is manifest that this uncertainty is not as to where the line theoretically should be drawn, but is on account of the difficulty of actually laying it down parallel to the sinuosities of the coast over the sea of inaccessible mountains through which the investigations made subsequent to the treaty show it would have to run. In his communication to Mr. Bayard, Mr. Dall shows that it was never intended in the interpretation of the Treaty, to depart from a line parallel to all the sinuosities of the coast. For this reason he says:

The single continuous range being non-existent, if we attempt to decide on the 'summit' of the mountains we are at once plunged into a sea of uncertainty. Shall we take the ridge of the hills nearest the beaches? This would give us in many places a mere strip of territory not more than three miles wide meandering in every direction. Shall we take the highest summit of the general mass of the coast ranges? Then we must determine the height of many thousands of scattered peaks, after which the question will arise between every pair of equal height and those nearest to them. Shall we skip this way or that with our zig-zag boundary, impossible to survey except at fabulous expense and half a century of labour?"

He further says:

In short, the "summit of the mountains" is wholly impracticable. We may then fall back on the line parallel with the windings of the coast. Let any one with a pair of drawing compasses having one leg, a pencil point, draw this line on the United States Coast Survey map of Alaska (No. 960 of 1884). The result is sufficient to condemn it. Such a line could not be surveyed; it crosses itself in many places and indulges in myriads of knots and tangles."

A line indulging in such "myriads of knots and tangles" is not a line parallel to the general trend of the mainland coast, but a line drawn parallel to the sinuosities of all interior waters. Mr. Bayard understood it in this way, for, referring to the line traced on the Coast Survey map of Alaska, he said:

The line traced upon the Coast Survey Map of Alaska No. 960, of which copies are sent to you herewith, is as evidently conjectural and theoretical as was the mountain summit line traced by Vancouver. It disregards the mountain topography of the country, and traces a line, on paper, about thirty miles distant from the general contour of the coast. The line is a winding one, with no salient land-marks or points of latitude and longitude to determine its position at any point. It is in fact such a line as is next to impossible to survey through a mountainous region, and its actual location there by a surveying commission would be nearly as much a matter of conjecture as tracing it on paper with a pair of dividers."

This line is traced about thirty miles distant from the heads of the interior waters, and that is "the coast" that Mr. Bayard had in mind.

In the same letter he further speaks of the seacoast being scarcely less intricate than that about the Firth of Solway.

Mr. Phelps, in communicating the foregoing considerations of Mr. Bayard to the Marquis of Salisbury, entertained exactly the same view of what coast was meant, and referring to Vancouver's map, he says that it "shows a range of mountains apparently continuous and sharply defined, running parallel with the coast, about ten marine leagues inland."^a

This coast was the coast of the interior bays and inlets, for those mountains are manifestly more than twenty marine leagues inland from parts of the coast line now insisted upon by Great Britain. His meaning, however, is made absolutely clear, for he says:

The coast proves upon survey to be so extremely irregular and indented, with such and so many projections and inlets, that it is not possible, except at immense expense of time and money, to run a line that shall be parallel with it, and if such a line should be surveyed, it would be so confused, irregular and inconsistent, that it would be impossible of practical recognition, and would differ most materially from the clear and substantially straight line contemplated in the Treaties.

The result of the whole matter is that these treaties, which were intended and understood to establish a proper boundary, easy to observe and maintain, really give no boundary at all, so far as this portion of the territory is concerned.^b

The sum of all this is that the negotiators thought there existed a clearly defined and substantially continuous coast range which extended around all of the coasts and that, relying upon this, they adopted it as a boundary line, that it appears that no such chain exists within ten marine leagues from the coast and that instead, the whole country is an irregular mass of mountain formations: that to undertake to select from this formation any series of mountains running parallel to the coast would be a mere arbitrary selection without any good reason for differentiation, and that on account of the character of the country it would be impracticable to lay down the line so selected on account of the expense; and that if the mountains be disregarded altogether, the condition would not be bettered, for the expense of laying down a line in that country parallel to such an irregular and indented coast, would be almost prohibitory. There is nothing whatever in what he says that differs from the view expressed by Mr. Fish that the line is there and that the jurisdictions

^aB. C. App., 253.

^bB. C. App., 254.

of the respective countries must divide on that line, no matter how difficult it may be of ascertainment, and there is nothing whatever said by him to indicate that on account of this difficulty a new interpretation must be put upon the Treaty which will permit a line to be drawn perpendicular to instead of parallel to parts of this sinuous coast. What he said was in entire harmony with the expression of the Earl of Iddesleigh in his letter to Mr. Phelps of August 27, 1886, in which, referring to a copy of the map of the Dominion of Canada, based upon surveys made by the Geological Corps 1842-1882, he said that:

The Alaska boundary line shown therein is merely an indication of the occurrence of such a dividing line somewhere in that region.^a

This dividing line, as shown on the map, was substantially in accordance with the line as now claimed by the United States. The expression "somewhere in that region" did not mean somewhere in the region of where the line is now proposed to be located by the Government of Great Britain, but somewhere in the region around the heads of all the interior waters where the line was indicated on the map to be. The particular point where it was located on the ground had not been determined. The particular crossings of the rivers, the particular peaks or mountain passes where it would go, would have to be fixed by surveys, but that it was a line running around all the coasts in the sense in which that word had down to that time been used without deviation is too clear for controversy.

Lord Iddesleigh, while making a reservation as to the location of the line denoted by the map on account of the country not having been topographically surveyed, made no reservation whatever on the question of coast, or any suggestion that if there should be an occurrence of mountains, their trend could be followed across the coasts of the bays and inlets. Stress is laid upon the reservation made by Lord Iddesleigh in regard to this map, on the ground that it was the first occasion when such a map was handed by a representative of the British to a representative of the United States Government, and immediately after the problems presented by the topography had attracted attention.^b

While the other maps may not have been handed to a representative of the United States Government, they had been promulgated for more

^a B. C. App., 255.

^b B. C., 36.

than half a century by the British Government and were matters of common knowledge. While the problem presented by the topography then attracted attention, there were no problems then or at any other time attracting attention as to where the bays and inlets were located, as to where their coasts were, and as to whether or not a line drawn parallel to the so called mainland coast and not more than ten marine leagues therefrom would throw a large portion of these waters and coasts in British territory. It needed no topographical surveys to suggest any such problems as this. Such problem, if involved, depended alone upon the meaning attributed to the word coast, and all of the data necessary for raising any such problem were known just as well in 1825 as they were in 1887. But Lord Iddesleigh suggested no problem of that character and made no reservation that would remotely suggest the existence of any such problem.

It is stated in the British Case that in 1888—

During the currency of the fishery negotiations at Washington Dr. G. M. Dawson, as representing Her Majesty's Government, in an informal conference with Mr. Dall, representing the United States, put forward the contention that the territories surrounding the head of Lynn Canal were British.

The report of the conference between Dr. Dawson and Mr. Dall was subsequently laid before Congress by President Cleveland in his message dated March 2, 1889.

In recommending to the president the publication of these documents the Secretary of State observed:

These documents are considered of value as bearing upon a subject of great international importance and should be put in shape for public information."

There is nothing to show that Dr. Dawson represented Her Majesty's Government or that Mr. Dall represented the United States. Certainly there is nothing to show that Dr. Dawson was authorized to put forward in behalf of Great Britain a claim so radically contravening what had been before that uniformly manifested as the British interpretation of what the word "coast" under the treaty meant.

There is contemporary evidence of Mr. Dall's understanding of the attitudes occupied respectively by Dr. Dawson and himself. He says in a letter to Mr. Bayard:

I have the honor to report that the suggested informal conference between Dr. George M. Dawson, of Ottawa, Canada, and the writer has been held. Dr. Dawson and myself conferred on several occasions (February 4-11) and discussed matters connected with the Alaska boundary question freely and informally.

It was mutually announced and agreed that the meeting was entirely informal; that neither party had any delegated powers whatever, and that its object was simply the arrival at a consensus of opinion as to some reasonable and business-like way of settling upon a line satisfactory to both countries and the most practical means of demarcating the line if one was accepted.^a

It certainly was a most remarkable procedure, if Dr. Dawson did represent, as the British Case states, "Her Majesty's Government," and if, as Lord Lansdowne says, the line drawn by him embodied the Canadian view, for a government to waive the usual channels of diplomatic communication on matters of great import, and to entrust the advancement of a contention which was a departure from its settled course of conduct for a period of over sixty years to be made by an unaccredited person to a person who understood that neither of the two "had any delegated powers whatever."

It cannot be seriously contended that either government understood Dr. Dawson as advancing anything more than an exploitation of his and General Cameron's construction of the treaty, which was advanced by him, no doubt, as shown by Mr. Dall, to arrive at a result by which a conventional line through mutual concessions might be arranged.^b

That Mr. Dawson did not advance his views as those of the British Government and by authority of the British Government is shown by the letter of Sir Charles Tupper to Mr. Bayard of February 11, 1888, in which he says:

In supplement of the Alaskan maps by Dr. Dawson, which I presented to you yesterday, I now beg your acceptance of the accompanying copy of Dr. Dawson's letter of the 7th instant, explanatory of his own views on the subject of the British-Alaskan Boundary.^c

So far from Dr. Dawson ever putting forward any such claim in behalf of the government, Mr. Dall shows that—

Differences have been alluded to, raised by General Cameron in the construction of the details of the Alaska Treaty which relate to the boundary,^d and that:

Waiving these fundamental differences in construction of the Treaty, Dr. Dawson suggested two alternative methods of obtaining a boundary line.^e

Dr. Dawson wrote a letter to Sir Charles Tupper setting forth the views of General Cameron.^f Mr. Dall said, he most courteously furnished him with a copy of it, "in order that these views should

^a U. S. C. C. App., 94.

^b U. S. C. C. App., 94 to 113.

^c U. S. C. C. App., 156.

^d U. S. C. C. App., 85.

^e U. S. C. C. App., 96.

^f B. C. App., 259-261.

clearly be put on record." It is manifestly an overstatement to say, as Lord Landsdowne has said in his letter of August 18, 1902, that they were accepted as embodying the Canadian view, or as is said in the British Case, p. 94, that they were put forward by Dr. Dawson as representing Her Majesty's Government, as "the contention that the territories surrounding the head of Lynn Canal were British."

Dr. Dawson says that General Cameron's view as to what is intended by the expression "*la côte*" may be substantially adopted. It was a mere suggestion to Sir Charles Tupper. If the view had been adopted already and he had been authorized to put forward such a claim, he would not then have been making the suggestion, and would not have entered into a labored argument for the purpose of convincing Sir Charles Tupper that it could be sustained.

This letter was written on the fourth day of the conference. He certainly appears to have had no such authority at that time.

The best evidence that he did not represent the British Government is that that government never acted on his suggestion, and never followed it up.

Dr. Dawson in his report makes no pretense of having put forward any such claim. In his letter to Sir Charles Tupper of February 11, 1888, he states that he had several informal conferences with Mr. Dall, with the purpose of arriving, if possible, at some conventional line which might be recommended as advantageous to both countries.^a

He says:

I found, however, that Mr. Dall was not disposed to regard with favor any suggestion which would involve the cession of any part of the coast line of Alaska.^b

He evidently understood here by coast that part of the coast bordering on the inlets, and that Great Britain could get it only *by* cession.

This letter is his report of the interview, and there is not a word in it which indicates that he put forward any such claim in behalf of the British Government, as is now made.^c

Dr. Dawson's views as to what the word coast in the treaty meant had undergone a radical change from the time he wrote his letter, on February the 7th, in which he undertook to show that the coast could not possibly have applied to the border of the interior waters, and February 11th, where, with absolute distinctness, referring to such border, he speaks of it as "any part of the coast line of Alaska."

^a B. C. App., 261-262.

^b B. C. App., 262.

^c B. C. App., 261-263.

But this view of February 11th is in entire accord with the one held by him in 1887 and 1898. In a narrative of the Yukon Territory, describing an exploration made in 1887, which narrative was published in London in 1898, he uses the following expressions:

and from its headwaters we crossed the mountains by the Chilkoot pass and reached the coast at the head of Lynn Canal on the 20th of September.^a

It is somewhat less in the latitude of the Chilkoot pass, but may be assumed to occupy a border of the mainland about fifty miles in width along the whole of this part of *the coast*.^b

* * * interiered with a lucrative and usurious trade which the Chilkoot and Chilkat Indians of Lynn Canal, *on the coast*, had long been accustomed to carry on with these people. c * * *

It leaves *the coast* at the mouth of the Skagway River five miles south of the head of Taiya Inlet and runs parallel to Chilkoot pass at no great distance from it. The distance from *the coast* to the summit is stated as seventeen miles. * * *

The passes connecting *the coast* with the interior country from the heads of Lynn Canal to the upper waters of the Lewes, were always jealously guarded by the Chilkat and Chilkoot Indians of *the coast*.^d

That the coast theory of Mr. Dawson had not, up to February, 1892, received any acceptation, even in Canada, is evidenced by a speech made on that date by Mr. Scott in the Canadian Senate, in which he said:

There was no dispute as to the boundary of Alaska. . . . The line was defined, but not marked out. There is no doubt a dispute as to where it goes. . . . It is purely a question of survey. The terms of the treaty are not disputed. I think as a matter of compromise at the time it was agreed between the two countries that we should mark off the line where it crossed the Stikine and other rivers, but it was going to cost too much entirely to run out this particular boundary.

He concluded as follows:

The expensive part is, of course, the fringe of land that runs along the coast up to the particular part where the meridian runs, because it is entirely a matter of cost. I have never heard of any dispute as to the interpretation to be given to the treaty, because the treaty is plain and speaks for itself. I have the terms of it under my hand here this moment, if it is desirable to read them. I do not suppose it is; it cannot be disputed.^e

It would have been impossible for him to have spoken thus if Canada had advanced, or sustained, the contention that the word "coast" in the treaty, meant anything but what the word usually imported, and what it was shown to mean, by all of the official maps of all three of the governments directly concerned in the boundary, which had

^a U. S. C. C. App., 258.

^b U. S. C. C. App., 259.

^c U. S. C. C. App., 260.

^d U. S. C. C. App., 261.

^e U. S. C. C. App., 167, 168.

been issued up to that time. Mr. Scott could not have spoken unadvisedly. He was Commissioner of Crown Lands 1872-73, was a Senator in 1873, was Secretary of State 1873-1878, and was leader of the opposition in the Senate 1879-96.^a

ATTENTION CALLED IN 1887 TO SCHWATKA'S RECONNAISSANCE OF 1883.

In 1883 Lieutenant Schwatka, at the direction of General Miles, on account of the reports of difficulties between the whites and Indians in Alaska, made a military reconnaissance for the purpose of ascertaining the number, nature and disposition of all the natives living in that territory, the tribal subdivisions, the sections inhabited by them, their modes of life, how they were armed, and, in fine, everything practicable of the character of the country in reference to military purposes. He was charged with no duty whatever having the remotest reference to the interpretation of the treaty or the location of the boundary under it.^b

In his report he stated that:

The fact that the country beyond Perrier Pass in the Kotusk mountains lies in British territory (as shown by our astronomical observations and other geographical determinations, when brought back and worked out), lessens the interest of this trail beyond the pass to the military authorities of our government.^c

This report having been communicated to the Colonial Foreign Office, Lord Salisbury, in a letter to Sir L. West of August 20, 1887, calls attention to the fact that Lieutenant Schwatka's report showed that he had extended his reconnaissance into British territory to Fort Selkirk, which is situated on the Yukon River far to the north of the head of Lynn Canal and some distance from the boundary line as always claimed by the United States. He also says:

It will also be seen on referring to pages 20 and 47 of the Report, that Lieut. Schwatka has indicated two points, to wit: Perrier's Pass and 140th degree west longitude, which he has determined as defining the international boundary.

Her Majesty's government, as you are aware, have agreed in principle to take part in a preliminary investigation of the Alaska Boundary Question, but they are not prepared to admit that the points referred to by Lieut. Schwatka in any way fix where the lines should be drawn.

He adds:

Her Majesty's government have no desire at the present moment to raise any discussion in regard to the question of the boundary between Alaska and British

^a U. S. C. C. App., 167.

^c U. S. C. C. App., 89.

^b U. S. C. C. App., 89-90.

Columbia, but in order that it may not be prejudiced hereafter by absence of remark on their part on the points alluded to above, I request that you will, in a friendly manner, call Mr. Bayard's attention to the observations contained in this despatch.^a

On September 14, 1887, Sir L. West communicated to Mr. Bayard a memorandum containing the above extract, but in calling attention to it he only made observation upon the fact that Schwatka

traversed British territory for a considerable distance without any intimation having been given to the British authorities of his intention of so doing.

He concluded by saying:

I may add, however, that Her Majesty's government do not attach any importance to this fact, and that no doubt had their acquiescence been asked, it would not have been refused.^b

He made no reference to what Lord Salisbury had said about not being prepared to admit that the points referred to by Lieutenant Schwatka in any way fixed where the line should be drawn. Certainly there is not the remotest suggestion that Great Britain then held that the line should be drawn in any essential feature different from the way in which it had been drawn up to that time. There was absolutely nothing whatever involved in this affair which hinted at the coast line theory afterwards adopted by Great Britain.

The British Case dignifies this communication by entitling it "Canada's Protest."^c If it be admitted that the communication of Sir L. West to Mr. Bayard should have such a formidable title, it must on the other hand be admitted that such protest can in no way be tortured into a representation of the interpretation now sought to be put upon the treaty in regard to coasts and interior waters. If it had any such purpose, it was so artfully veiled as to make it entirely undiscernible, and consequently of no significance as a notice to the Government of the United States.

WHITE PASS TRAIL, 1888.

On June 19, 1888, it was communicated to Sir J. Macdonald, then Prime Minister of Canada, that it was believed that:

certain persons are about to receive a charter from the Alaskan authorities to construct a trail from Lynn Canal by way of White Pass to the interior of Alaska. If our view of the case is correct, the entire route of this trail, as well as the trail by the Chilkoot Pass, is in Canadian territory. In view of the well-based contention on

^aB. C. App., 256.

^cB. C., 94.

^bB. C. App., 257.

our part, that the heads of the larger inlets which penetrate that portion of Alaska which consists of the coast line from Mount St. Elias to Portland Channel, and more particularly the head of Lynn Canal, are within our territory, it would appear to be important to protest against the granting of any rights by the United States or Alaskan government at the heads of these inlets.^a

This communication was from A. M. Burgess, Deputy Minister of the Interior, of Canada. This appears to have been transmitted by Sir J. Macdonald to Sir Charles Tupper, but for some reason not stated, the communication of Sir J. Macdonald is omitted from the correspondence printed by the British Government.^a

Sir Charles Tupper transmitted it August 1, 1888, to the Colonial Office and added a memorandum prepared by Major General D. R. Cameron. This memorandum distinctly advanced the theory now contended for by the British Government. He prefaced it by a demonstration of its necessity by saying:

By way of Lynn Canal, of which the entrance is about 135° west longitude, 58° 20' north latitude, is at present the only practical route to gold mines being worked on tributaries of the Pelly River, some in British and some in United States territory.^a

It states that:

From the ocean entrance to Lynn Canal the head of boat navigation up the Chilkoat is about 80 miles; from this point to Perrier Pass is somewhat in excess of 30 miles or 10 marine leagues.

Lynn Canal has waterways of less than six miles in breadth at no great distance from its entrance.

It is contended on the Canadian side that the ten marine leagues given as the maximum breadth of United States coast territory in the second subsection of Article IV, Russo-British Convention of 1825, may not be measured from any point within an inlet not exceeding six miles in breadth, and that, consequently, it is not, under any circumstances, possible that the international boundary can be anywhere so far inland as Perrier Pass.

He submits that "the United States' contention should be emphatically protested against."^b

Sir Charles Tupper, in concluding his letter of August 1, 1888, to the Colonial Office, after referring to this memorandum says:

I entirely concur in the great importance of protesting against the United States contention.^a

Dr. Dawson had advanced this theory in his letter to Sir Charles Tupper of February 7, 1888.^c

^a B. C. App., 264.

^b B. C. App., 265.

^c B. C. App., 259-261.

Thus it was again called to Sir Charles' attention by the memorandum of Major General Cameron, which he communicated to the Colonial Office, re-enforced by his entire concurrence in the great importance of protesting against the United States' contention that under the treaty it owned all of the interior waters of Lynn Canal and Takn Inlet.

Thus the question was for the second time squarely presented to the British Government, sixty-three years after its original interpretation, to which it had consistently adhered. It had an opportunity, and was urged by the Canadian authorities to take a position in line with the views advanced by Dr. Dawson and General Cameron, and what course was pursued? Lord Salisbury, on August 1, 1888, transmitted to Sir L. West a copy of all these papers, styling them, "Relative to a rumor that a charter is about to be granted by the Alaskan authorities of the United States for certain privileges in that part of Alaska which is claimed by this country."

He concludes:

I have to request that you will inform Mr. Bayard that this report has reached Her Majesty's Government and that it is presumed to be unfounded as the territory in question is part of Her Majesty's dominion. ^a

At the same time he transmitted a copy of this communication to the authorities in Canada, clearly acquainting them with his failure to make any such protest as that suggested by General Cameron and Sir Charles Tupper in regard to the sovereignty over Lynn Canal.

Sir L. West, on September 10, 1888, addressed Mr. Bayard as follows:

I have the honor to inform you that the Marquess of Salisbury has requested me to bring to your notice a rumor which has reached Her Majesty's Government that a charter is about to be granted by the authorities of Alaska for certain privileges in a part of that country which is claimed by Great Britain.

Her Majesty's Government presume that this rumor is unfounded, as the territory in question is part of Her Majesty's dominions. ^b

He did not leave the Marquis of Salisbury in ignorance of what he had done, but transmitted to him a copy of the note, as well as a copy of Mr. Bayard's reply thereto. ^b

Mr. Bayard said:

The rumor to which you refer is, as stated by you, certainly vague and indefinite and has not come to the notice of this Department, which is wholly without infor-

^a B. C. App., 265.

^b B. C. App., 266.

mation in regard to the granting of such a charter as you mention or to the locality of the territory to which it is said to apply. ^a

Sir L. West did not enclose to Mr. Bayard the memorandum prepared by General Cameron. The suggestion of General Cameron, though endorsed by Sir Charles Tupper, was summarily dismissed.

In view of the note of Sir L. West to Mr. Bayard and the reply of Mr. Bayard, the statement in the British Case cannot but be regarded as extravagant wherein it says:

Again, in 1888, the Canadian Government forwarded a further protest to Her Majesty's Government for communication to the United States Government against a rumored attempt of the United States to exercise jurisdiction at the White Pass, claiming it as British territory. ^b

unless the passage be taken to mean that the protest was simply effective as against Her Majesty's Government.

It certainly was no protest to the United States Government, as it was never communicated. The fact that such protest was made "to Her Majesty's Government for communication to the United States Government," coupled with the further fact that it was not communicated is strong if not conclusive evidence that at that time the Government of Great Britain distinctly repudiated the suggestion.

SO-CALLED PROTEST OF 1891.

In the meantime the jurisdiction of the United States over all of said territory was uninterrupted and unquestioned, and nothing further appears to have transpired upon which anything in the nature of a protest is sought to be based until June 5, 1891, which was within a few days of three years after the memorandum prepared by General Cameron was communicated to Sir John Macdonald. In the meantime a Collector of Customs was appointed for Chilkat and a customs office was established there in 1890. The United States court was exercising complete jurisdiction over every part of that territory. No one living there during that period ever questioned or ever heard questioned the sovereignty of the United States.

In 1889 the value of the canning improvements in and about Pyramid Harbor aggregated \$100,000, and there were canned annually about 55,000 cases of salmon caught in the Chilkat River.

In 1887 a settlement by American missionaries was made at Haines Mission and about twenty-five Americans lived there the year through.

^a B. C. App., 266.

^b B. C., 94.

In 1890 F. H. Poindexter was a United States Justice of the Peace at Pyramid Harbor and exercised jurisdiction in that vicinity.

In 1888-9 the town of Skagway was settled.

In 1888 Governor Swineford reported that there were thirteen schools in operation in Alaska, one of them being at Chilkat.

In 1890 there was a census taken of Alaskan Indians, which included those living at Berners Bay, at Chilkat, Chilkoot, Klukwan, and Pyramid Harbor.

On June 5, 1891, Sir Julian Pauncefote addressed a communication to Mr. Blaine, stating that the Governor General of Canada had brought under the notice of Her Majesty's Government a passage in the last published report of the United States Coast and Geodetic Survey as follows:

By recent congressional enactments, a preliminary survey of the frontier line between Alaska and British Columbia in accordance with plans or projects approved by the Secretary of State, has been placed in charge of this bureau.

Such a preliminary survey, involving the determination of a number of points in geographical position and their complete marking by permanent monuments, will have to be carried from Cape Muzon *through the Portland Canal* to the 50th degree of north latitude; thence northwesterly, following as near as practicable the general trend of the coast, at a distance of *about 35 miles from it*, to the 141st degree of west longitude, and thence due north to the Arctic Ocean, a total distance of about 1400 miles.

He concludes:

The Dominion Government has expressed a desire that the United States Government may be reminded that the question of the boundary at this point is, at the present time, the subject of some difference of opinion and of considerable correspondence, and that the actual boundary line can only be properly determined by an international commission."

He does not say what points he means, but inasmuch as the words "through Portland Canal" and also the words "about 35 miles from it" are italicized, it might be said that he intended to question that portion of the line through Portland Canal, or whether the line should run thirty-five miles from the coast. There is not the slightest suggestion that would enable even so astute a man as Mr. Blaine was, to surmise that any such theory was hinted at as that now advanced by Great Britain. The fact of there being "considerable correspondence" is mentioned. No correspondence between the two governments had ever made any such suggestion. The communica-

tion of Sir Julian Pauncefote is entirely valueless for the purpose of basing any claim upon it that the present theory of the British Case was at that time made known to the Government of the United States.

And yet, in the British Case, this is styled the British protest of June, 1891.^a

THE CONVENTION OF JULY 22, 1892.

After setting out Art. I. of the Convention of July 22, 1892, the British Case proceeds to comment upon its effect as follows:

It is to be observed that the Convention of the 22nd of July, 1892, has reference to an existing boundary, and that it provided for the ascertainment of the facts and data necessary to its permanent delimitation in accordance with the spirit and intent of the existing Treaties. In view of contentions which have since been put forward in the course of this controversy, that the claim of the United States receives support from effect having before this date been given to their interpretation of the Treaty in 1825 by maps published or acts done with the acquiescence of Great Britain, it is important to observe that by this Convention the rights of the two Governments concerned are by agreement referred back to the Treaties. The facts and data to be ascertained were to be so ascertained by a joint survey. Previous cartography or acts of settlement were not embraced in the work authorized by the Convention, nor did the Commissioners, who properly confined themselves to the Convention under which they were appointed, report upon such cartography or acts of settlement, if any existed.^b

Certainly there was "an existing boundary," but not an ascertained boundary. It was, as is insisted for the United States, by the language of the Treaty, as interpreted by the parties, ascertained to the extent of sweeping around the heads of bays and inlets, but the width of this *lisière* had not been ascertained, and it was desired to get data for that purpose.

The astounding passage in the part just quoted is that which puts forward the claim that, by entering into the Convention of 1892, the United States abandoned all of its rights that might be predicated upon the interpretation put upon the Treaty of 1825 by "maps published or acts done with the acquiescence of Great Britain" and relegated the whole matter to an interpretation *de novo* of the treaties themselves without regard to what had transpired for a period of 67 years. This proposition would be sufficiently untenable on its face, if it were not in direct conflict with the Treaty under which the case is pending, which expressly provides that each party may present to

^a B. C., 98.

^b B. C., 40.

the tribunal all pertinent evidence, including maps, and that the tribunal shall take into consideration any action of the several governments so far as the same tends to show the understanding of the parties in respect of the limits of their several territorial jurisdictions.

The Treaty of July 22, 1892, provides for a survey "with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing treaties in regard to it between Great Britain and Russia and between the United States and Russia."^a This did not efface the interpretation put upon the Treaty by the parties, but only provided for data to carry the proper interpretation into effect.

The Earl of Rosebery, in his instructions to Mr. King, the British Commissioner, directed him to effect a joint survey "with a view to the permanent delimitation of the boundary line in accordance with the spirit and intention of the Treaties in regard to it."^b

The Treaty did not authorize the commissioners to establish any line, but only to survey "with a view to the ascertainment of the facts and data necessary" therefor.^a

The High Contracting Parties agreed as soon as practicable after report or reports of the Commissioners "to consider and establish the boundary line in question."

THE INSTRUCTIONS OF DR. MENDENHALL, 1893.

Much comfort seems to be derived in the British Case from the opinion as to what was "coast," which is supposed to be disclosed by the instructions given by Dr. Mendenhall in 1893 to his assistants and surveyors who were to make the survey contemplated by the Treaty of 1892.

It is true that in his letter of March 16, 1893, to Mr. Tittmann, who was charged with the duty of surveying the Stikine River, he directed him to continue "to a point on the Stikine River distant not less than thirty nautical miles from the coast of the mainland in a direction at right angles to its general trend."^c

He also said:

A topographical survey or sketch will also be carried on over the same route, but all possible additional geographical information will be collected, particularly as to

^a B. C. App., 269.

^c B. C. App., 274.

^b B. C. App., 272.

the location of mountain peaks and the existence or non-existence of a *range* of mountains parallel to the coast. Should a range of mountains be found to exist, it is of the first importance that its distance from the coast and its general trend should be determined, unless such distance should considerably exceed the specified thirty nautical miles.^a

He did not explain what he meant by "mainland coast" or "coast."

In his instructions to Mr. McGrath March 18, 1893, who was to make the survey of Taku Inlet and river, he directed him to survey to a point "on the inlet or river distant not less than thirty nautical miles from the coast of the mainland in a direction at right angles to its general trend."^b This, on its face, seems to indicate that in surveying thirty miles from the coast, the distance might be reached while yet on the inlet.

The conclusion is stated in the British Case that: "It is evident that Dr. Mendenhall did not consider the shore line of an inlet as being part of the 'coast.'"^c That may be true as of that time, and, if true, it may be said in reply:

1. Dr. Mendenhall was not charged with the duty of construing the treaty. His authority was confined to the practical administration of the Department of Coast and Geodetic Survey, and was purely ministerial. At most, it is to have only such weight as his mere opinion would be entitled to.

2. It does not appear that his mind was particularly addressed to any conflict of views as to what the coast line was; and, further, it does not appear that he had any acquaintance with anything bearing on the question except the text of the treaty itself.

But it is not necessary that either of these be urged. It is sufficient to say that if such was his opinion in 1893, he changed it after he had a year of acquaintance with the subject. On March 21, 1894, in his instructions to Mr. Pratt, he said:

On the receipt of these instructions you will please arrange to proceed by the Steamer *Hassler*, which will furnish transportation to and from the field for your party and outfit, and which will sail from Seattle about April 27th to Lynn Canal, where you will execute the triangulation and topographical reconnaissance of the Chilkat and Taiya Inlets to the ten marine league limit. You will also establish an astronomical station on the west side of Chilkat Inlet and connect it by triangulation with the old station on Pyramid Island.^d

Here he very clearly indicates that the ten league limit was not to be measured from any coast near the mouth of Lynn Canal, but from

^a B. C. App., 274.

^b B. C. App., 276.

^c B. C., 74.

^d U. S. C. C. App., 276.

the coast at its head. In his instructions to Mr. McGrath in this same month he said:

The Steamer *Patterson* will call for you at Yakutat at such time as you may have agreed upon with her commanding officer, and will then transport yourself and party to the head of Lynn Canal, where you will render such assistance to the parties there at work as may be necessary to ensure the completion of that survey.^a

In April, 1894, he directed Mr. Flemer:

* * * to proceed to Alaska and make a topographical reconnaissance of the country to the northward and eastward of Taiya Inlet and River to the ten marine league limit.^a

He also said to him:

The party of Assistant Pratt will be engaged in the survey of the Chilkat Inlet and River to the boundary, and his camps may be used by you as a base of operations when practicable.^b

He gave similar instructions to Mr. Ritter in April, 1894.

The British Case says:

It is to be observed that Dr. Mendenhall and his able assistants were engaged under the Convention of 1892 in ascertaining "the facts and data necessary to the permanent delimitation of the boundary line in accordance with the spirit and intent of the existing Treaties." Copies of Articles III and IV of the Treaty of 1825 were embodied in the instructions above cited. Yet the principle followed by them (which is the same as that applied on the Stikine River by Mr. Hunter in 1877), is inconsistent with the view *since* contended for by the United States. For if the line is properly drawn parallel to the general trend of the coast when inlets breaking that general trend terminate short of the line so drawn, it must also be properly so drawn when the inlets are long enough to be cut by it. The effect of the occurrence of the mouth of an inlet upon the general trend of the coast cannot depend upon its interior length.^c

In the light of *all of the instructions, and what was done under them*, "the principle followed by them" is not "inconsistent with the view since contended for by the United States." If they are to be appealed to by Great Britain as authority, then its cause, as to the Fifth Question, is surrendered, for they clearly included the whole of Lynn Canal, the longest of all the inlets, within the coast, and within United States territory. The concurrent action of the commissioners of the two governments is an interpretation of the meaning of the word coast as used in the treaty.

In pursuance of this undertaking to survey "the principal water courses which traverse the coast strip" during the year 1894, "the

^a U. S. C. C. App., 280.

^c B. C., 74-75.

^b U. S. C. C. App., 281.

following parties were placed in the field on behalf of the United States Commission: Mr. Pratt, on the Chilkat Inlet and River and on Chilkoot and Taiya Inlets and Taiya River; Mr. Dickens, on Knik River and Chilkat Inlet; Mr. Flemer, on Chilkoot and Taiya Inlets; Mr. Ritter, on Chilkat Inlet and River; Mr. Klotz, around Bradfield Canal; Mr. Ogilvie, on the east side of Lynn Canal; Mr. McArthur, at the north end of Lynn Canal; Mr. Robertson accompanied Mr. Pratt and party as attache for the British Commissioner.”^a

Thus the British Commissioner not only agreed to these assignments in pursuance of the treaty to survey “these water courses which traverse the coast strip,” but sent a representative to co-operate in it. The result of all these surveys accompanied their report.”

DYEA AND SKAGWAY AND ALLEGED PROTEST.

The British Case, referring to the Klondike rush of 1897, says:

Many stopped at Dyea and Skagway, while others pushed on over the passes to the gold fields. By this movement of travel Dyea and Skagway came into existence.^b

As has been shown, an American established a trading place at Dyea in 1886, which was never abandoned, and in 1888-9 Captain Wm. Moore located the townsite of Skagway, and his son settled there. For many years prior to 1897 the jurisdiction of the United States courts had been exercised where those towns were subsequently established. The revenue laws of the United States had been extended to and exercised over all of that territory from 1868, and this jurisdiction had never been questioned. In 1880 all foreign vessels were forbidden to unload at Chilkat.

It is said in the British Case, referring to the revenue laws, that:

These regulations were put in force, notwithstanding that Canada's claim to the territories at the head of Lynn Canal was at the time well known to the United States Government.^c

This is a gratuitous assertion. There is no proof to sustain it. Canada never put forward any such claim to the United States. The claim was first made in 1898 by Great Britain before the Joint High Commission.

It is said on page 95 that:

if the Canadian Government had instructed British vessels to disregard these regulations, there would have been grave danger of a serious collision.

^a B. C. App., 284.

^b B. C., 93.

^c B. C., 94.

There would undoubtedly have been a collision, just as certainly as if they had been instructed to disregard the regulations at the Port of New York. The head of Lynn Canal had for thirty years been under the unquestioned jurisdiction of the United States.

It is said that instead of resorting to violence the Canadian Government "at the same time reserving her rights as to the ultimate determination of the boundary" on July 22, 1897, inquired whether or not Canadian goods could pass from Juneau to the Yukon frontier without payment of customs duties if owners paid for United States officers accompanying the goods.^a There was no such reservation as to the boundary when this request was made.

In reply it was asked: "Would it facilitate matters to make Dyea a sub-port of entry?"^b

The reply was: "It would facilitate matters if Dyea made a sub-port of entry pending settlement of boundary question."^b

This was from a commissioner of customs. Doubtless he meant that this would be a convenience until the exact boundary line in the interior should be determined. His government had never intimated that it claimed any part of Lynn Canal, and no such interpretation should be put on his telegram. The British Case expands the incident immensely by saying that the Commissioner requested that "if this arrangement were agreed to" the Treasury Department should issue instructions to permit British steamers from Canadian ports to land and receive passengers and goods at Dyea.^c The implication is that by the condition "if the arrangement," etc., the sovereignty over Dyea was to be treated as undetermined pending settlement of boundary question. The Commissioner said nothing about "if this arrangement" were agreed to. He only said, "if agreed to," manifestly meaning, if the United States Government would agree to make Dyea a sub-port of entry. The reply of Assistant Secretary Howell was simply that Dyea had been made a sub-port of entry and that the collector had been advised.

It is inconceivable that either party had in mind any reservation as to Dyea, and certainly neither of them had any authority in the premises.

On this slender basis the British Case builds an imposing superstructure and discusses it as a grave diplomatic treatment of the

^a B. C., 95.

^b B. C. App., 289.

boundary question. It says that the objective point referred to in the first Canadian communication is the "Yukon frontier," no special locality being mentioned.

A communication intended to have such fruitful results as those now contended for should have been so framed as to give a person of ordinary intelligence some conception of its purpose.

It is said that Canada, "in accepting this proposition, expressly provided that her acceptance was pending settlement of boundary question." The despatch of July 23rd cannot be inflated into any such a compact. There is not a word in it about acceptance, and there is no proviso about it. The straight meaning is that if the United States will agree to make it a subport of entry, it would facilitate matters until the boundary should be settled, and then, of course, the customs would be collected there. There was no question of agreement or compact. There was no reason for the United States to agree except to accommodate Canada. There was nothing but a favor in the transaction. It was not a bargain. There was nothing reciprocal. It made no difference to the United States whether it suited the Commissioner, except in so far as it wanted to be generous. A mere matter of grace should not be tortured into a formal compact affecting Dyea's relation to the boundary.

This is followed by a declaration quite in keeping. The Case says:

A few months later the Canadian Government in the early part of the year 1898 formally protested to the Imperial Government that the United States had established a sub-port of customs at Dyea in territory which they claimed was rightfully British."

Why did the Canadian Government protest against what it on the same page said had been done only under a formal agreement in which Canada "expressly provided that her acceptance was pending settlement of boundary question"? This shows the unsoundness of the contention as to the agreement, which was quite apparent without it.

But this protest, like the other alleged protests set up in the Case, never got any further than the British Government, which manifestly at that time did not sanction Canada's claim that the interpretation of the Treaty of such long standing, and acted on so notoriously by both governments, should be repudiated and a new one

asserted on which territory could be claimed which had been in the undisputed possession of the United States for over thirty years.

The exact date in 1898 when this protest was made to Great Britain by Canada is not given, nor is the form of it shown. Taken with the evidence in the record, the fact of such protest being made serves only to emphasize its insignificance, both in Canada and Great Britain, for it was not only not communicated to the United States or followed up by Canada, but was entirely out of accord with the views then held in Canada and by the representative of Great Britain at Washington.

On February 11, 1898, during a debate in the Canadian House of Commons, the Minister of the Interior, the Honorable Clifford Sifton, the question as to the ownership of the land about the head of Lynn Canal being under discussion, said:

Difficulties also arose in the White Pass, behind the village of Skagway, and at Chilkat Pass behind Dyea. I believe our contention is that Skagway and Dyea are really in Canadian territory, but as the United States have had undisputed possession of them for some time past, we are precluded from attempting to take possession of that territory.

SIR CHARLES HIBBERT TUPPER: May I be excused for saying that I do not think the Honorable Minister meant to say "undisputed possession."

THE MINISTER OF THE INTERIOR: There have been no protests made. It must be taken as undisputed when there has been no protest made against the occupation of that territory by the United States.

SIR CHARLES HIBBERT TUPPER: A claim, I suppose, was made and adhered to?

THE MINISTER OF THE INTERIOR: There is nothing in the records to show that any protest has been made—an unfortunate thing for us, but it is a fact. I do not know that that particularly affects the discussion, because there has been no real discussion about that particular point. We have taken the position that there can be no doubt raised as to the Canadian territory beginning at the summit; we have taken the position that the claim of Canada to occupy the territory inside of the summit from the boundary at White Pass and Chilkat Pass is not deniable, and we cannot admit it is debatable, and we have instructed our officers to establish posts as near the boundary as physical conditions will permit.

MR. FOSTER: How far from the water line?

THE MINISTER OF THE INTERIOR: About fifteen miles from tide water. An accurate survey has not been made in the White Pass, but the distance is about the same, fifteen miles. Therefore, so far as possible under the present conditions, the idea of the honorable gentleman has been carried out, and our officers have been instructed to locate themselves as nearly as possible to the summit on the northeastern side and to take the summit of the White Pass and Chilkat Pass as the boundary line, without making any admission as to the right of the United States to the territory on the seaward side.^a

^a U. S. C. C. App., 169.

On February 16, 1898, the following occurred:

MR. PRIOR: Before the Orders of the Day are called, I wish to ask the Right Honorable First Minister whether his attention has been called to certain paragraphs that have appeared in the press, both in the United States and in Canada, to the effect that the United States Government is about to send two companies of troops to be permanently stationed at Dyea and Skagway, at the head of the Lynn Canal. That is, as you know, in disputed territory. It is a highway to the Yukon country, and the reason given in these papers is, that there are a large number of disorderly characters assembled there at present, and that troops are required to prevent any riotous proceedings taking place. I also wish to ask the right honorable gentleman whether his Government has seen fit to let the United States Government know that they have no objection to these troops being sent there, but that such permission must not be considered as an admission on the part of Canada that our claim to that territory has been withdrawn. We saw, in times past, how the sending of troops to San Juan affected the argument before the arbitration, and I, for one, would not like to see the same thing occur again with regard to Dyea and Skagway.

THE PRIME MINISTER (Sir Wilfrid Laurier): The Government has not been informed of the intention to which my hon. friend has just referred. The Government did not know it was the intention of the American Government to send their troops to Dyea and Skagway. My hon. friend is aware that, although this is disputed territory, it has been in the possession of the United States ever since they acquired this country from the Russian Government in 1867, and, so far as my information goes, I am not aware that any protest has ever been raised by any Government against the occupation of Dyea and Skagway by the United States. It is only in recent years that the attention of the public has been drawn to it. I may say to my hon. friend, that the importance of having a delimitation or settlement of the boundary between Canada and the United States in that region is at this moment engaging our attention."

On March 7, 1898, the Prime Minister said:

We had either to take the route by the Lynn Canal and Dyea, or the route by the Stikine River. The advantages of the one had to be set against the disadvantages of the other, and *vice versa*. The advantages of the route by the Lynn Canal were that it was shorter and more direct than the route by the Stikine River. But if we had adopted the route by the Lynn Canal, that is to say, had chosen to build a railway from Dyea by the Chilkat Pass up to the waters of the Yukon, we would have to place the ocean terminus of the railway upon what is now American territory. I agree with the statement which has been made on the floor of this house, on more than one occasion, that Dyea, if the treaty is correctly interpreted, is in Canadian territory. It ought to be; but the fact is, as my hon. friends know very well, even those who do not belong to the legal profession, that possession is nine points of the law; and even though by the letter of the treaty Dyea is in Canadian territory, the fact remains that from time immemorial Dyea was in possession of the Russians, and in 1867 it passed into the hands of the Americans, and it has been held in their hands ever since.

Now, I will not recriminate here; this is not the time or the occasion for doing so, but so far as I am aware no protest has ever been entered against the occupation of Dyea by the American authorities; and when the American authorities are in possession of that strip of territory on the sea which has Dyea as its harbour, succeeding the possession of the Russians from time immemorial, it becomes manifest to everybody that at this moment we cannot dispute their possession, and that before their possession can be disputed, the question must be determined by a settlement of the question involved in the treaty.^a

On February 23, 1898, Sir Julian Pauncefote, in a communication to the Secretary of State, made on the direction of the Marquis of Salisbury, for the purpose of having a settlement of the boundary line, said:

The great traffic which is now attracted to the valley of the Yukon in the Northwest Territory by the recent discovery of gold in that region finds its way there from the coast, principally through certain passes at the head of the Lynn Canal, and it has become more important than ever for jurisdictional purposes that the boundary, especially in that particular locality, should be ascertained and defined.

Her Majesty's Government, therefore, propose that the determination of the coast line of the boundary south of Mount St. Elias should at once be referred to three commissioners (who should be jurists of high standing), one to be appointed by each Government, and a third by an Independent Power. It is suggested further that the Commission should proceed at once to fix the frontier at the head of the inlets through which the traffic for the Yukon valley enters, continuing subsequently with the remaining strip or line of coast.^b

In this he conceded that the line would run somewhere in the locality of the passes at the head of Lynn Canal, and that the frontier would be somewhere about the head of the inlets at the head of Lynn Canal.

ACQUIESCENCE.

It is respectfully submitted that it has been conclusively shown that for over seventy years before the present claim of Great Britain was preferred, Russia and the United States have exercised jurisdiction over the waters and coasts in dispute; that throughout that period Great Britain never sought in any way to assert any sovereignty over any part of them; and that by her official maps she concurred in the claims made notoriously and continuously by the official maps of Russia and the United States that the boundary line in dispute ran from the head of Portland Canal around the heads of all the bays and inlets.

The case of *Indiana v. Kentucky* grew out of a conflict as to the

^a U. S. C. C. App., 171-172.

^b B. C. App., 291.

proper construction of the deed of cession made on the 20th day of December, 1783 by the State of Virginia to the United States. The State of Indiana was carved out of the territory embraced in that deed of cession. Subsequently, by the consent of Virginia, Kentucky became an independent State. The controversy was between Indiana and Kentucky as to the boundary line between them. Mr. Justice Field, who delivered the unanimous opinion of the court, said:

It was over seventy years after Indiana became a State before this suit was commenced, and during all this period she never asserted any claim by legal proceedings to the tract in question. She states in her bill that all the time since her admission Kentucky has claimed the Green River Island to be within her limits and has asserted and exercised jurisdiction over it, and thus excluded Indiana therefrom, in defiance of her authority and contrary to her rights. Why then did she delay to assert by proper proceedings her claim to the premises? On the day she became a State her right to Green River Island, if she ever had any, was as perfect and complete as it ever could be. On that day, according to the allegations of her bill of complaint, Kentucky was claiming and exercising, and has done so ever since, the rights of sovereignty, both as to soil and jurisdiction, over the land. On that day, and for many years afterwards, as justly and forcibly observed by counsel, there were perhaps scores of living witnesses whose testimony would have settled, to the exclusion of a reasonable doubt, the pivotal fact upon which the rights of the two States now hinge, and yet she waited for over seventy years before asserting any claim whatever to the island, and during all those years she never exercised or attempted to exercise a single right of sovereignty or ownership over its soil. It is not shown, as he adds, that an officer of hers executed any process, civil or criminal, within it, or that a citizen residing upon it was a voter at her polls, or a juror in her courts, or that a deed to any of its lands is to be found on her records, or that any taxes were collected from residents upon it for her revenues.

This long acquiescence in the exercise by Kentucky of dominion and jurisdiction over the island is more potential than the recollections of all the witnesses produced on either side. Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to be overcome, except by the clearest and most unquestioned proof. It is a principle of public law universally recognized, that long acquiescence in the possession of territory and in the exercise of dominion and sovereignty over it, is conclusive of the nation's title and rightful authority. (136 U. S. Reports, 509, 510.)

See also the proceedings of the Commission under Art. IV of the Treaty of Ghent, relating to the title to the islands, in Passamaquoddy Bay, wherein the Agent of Great Britain concludes his argument as follows:

A total silence continued to be observed by the Government of the United States with respect to all these Islands now in question, excepting the three in that behalf

before named until the year 1807 notwithstanding the public notoriety of the facts of British settlement, and of the exercise of British jurisdiction over all the Islands as well Grand Manan as those in Passamaquoddy Bay with the above exception, and notwithstanding these facts were in evidence before the Commissioners of the two Nations under the 5th Article of the Treaty of 1794 as before mentioned.

In the year 1807 a claim is for the first time preferred by the United States to the Island of Grand Manan in the negotiations of the unratified supplemental convention of limits of that year in pursuance of the instructions in the letter from the Secretary of State of the United States under date of the 15th of May 1806 which letter has been already under consideration in the second part of this argument. No claim however as was there observed was even then in any manner suggested on their part to any of the Islands in Passamaquoddy Bay excepting the three Islands above mentioned.

At length however by the 4th Article of the Treaty under which this Honorable Board is constituted not only the Island of Grand Manan but all the Islands in the Bay of Passamaquoddy are claimed as belonging to the United States in conformity with the true Intent of the Treaty of 1783 and the Agent of the United States under this Commission has accordingly in his memorial preferred to this Board at their Session at St. Andrews in the month of September last claimed all these Islands and *each and every of them* as belonging to the United States under that Treaty.

The simple uncontroverted fact, that all these Islands now in question, upon the publication of the treaty of 1783 were in the possession of His Majesty, and with the exception of the three Islands above mentioned continued in his possession, with the tacit consent and acquiescence not only of the Government of the United States but that of the State of Massachusetts always vigilant and tenacious of all her rights and particularly jealous of all British encroachments upon her territory in this quarter must to any unprejudiced mind most strongly evince the sense of both Nations at that time with regard to the right to these Islands under that Treaty, and can be considered in no other light than as a mutual, cotemporary exposition of the true intent of the Treaty in that regard, in which not even a doubt is raised as to His Majesty's right to any one of the Islands now in question excepting the three in that regard so often before mentioned, and the claim even to these having been made under an erroneous impression with regard to the mouth of the River St. Croix.

To an unprejudiced mind also the further uncontroverted fact, that under this mutual understanding of the Treaty, the United States as well as the State of Massachusetts in the words of the late Agent of the United States before quoted "*remained silent spectators*" of the settlements and improvements made by His Majesty's Subjects upon these Islands with the above exception, during a period of more than twenty-three years with regard to one of them, and of more than thirty years with regard to all the others, will justly furnish an argument, that the United States have *no claim* at this day to any of those Islands. (P. 129 of Memorial of British Agent, dated June 11, 1817. MSS. United States, duplicate copy in State Department at Washington.)

The right of Great Britain to the territory in question was as perfect and complete as it ever could be, from the moment the Treaty

of 1825 with Russia was executed. If from that time down to 1898 she failed to assert the right now set up, and acquiesced in the exercise of dominion and jurisdiction upon the part of Russia and the United States, such acquiescence should be conclusive as to her understanding of the Treaty of 1825.

ALASKAN BOUNDARY TRIBUNAL.

APPENDIX TO ARGUMENT OF UNITED STATES.

THE LINE, SHOWN ON MAP NO. 37 BRITISH CASE, AND
ALLEGED TO BE THE LINE OF DEMARCATION, AS
DEFINED BY THE TREATY.

Where and how does the British line begin?

The British line does not continue up Portland Channel to the 56th degree of parallel north latitude, but takes a different direction from the head of this channel.

It runs, almost directly westward, from the head of Portland Channel, fifty-seven miles to a point on the 56th degree of latitude.

The treaty says, "la dite ligne remontera au Nord", until it reaches the 56th degree.

The British line does not go northwardly until it reaches the 56th degree.

The Faden, Vancouver, Arrowsmith, and Russian maps all showed the crest of the mountains on the 56th parallel near the head of Portland Channel. It is not possible to lay down the British line on any one of those maps and say that it crosses the 56th degree of latitude at the point where the crest of the mountains begins.

When the British line strikes the 56th parallel on Faden's map, it is distant from the nearest point of the chain of mountains on that map thirty-eight miles. Faden's map was before the negotiators, and Mr. George Canning said in his letter to Sir Charles Bagot that it was the most reliable map of them all.

The point of departure of the British line at the head of Portland Channel is distant from the nearest chain of mountains on Vancouver's map (No. 2 British Atlas) six miles. The point where the line strikes the parallel of 56 degrees is distant from the nearest chain of mountains, on that map, twenty-five miles.

Take Vancouver's general map, No. 1 British Atlas. The point where the line leaves the head of Portland Channel is distant from the nearest continuous chain of mountains twenty-two miles. The point where it strikes the 56th parallel is distant from the nearest chain of mountains twenty-five miles.

This general map of Vancouver seems to show, to a small extent, an exterior range of mountains for short distances, but this is not the continuous range of mountains, as defined in the treaty. This range is what might be termed the interior range of mountains on this map, and also the interior range on Map No. 2. It has a very large break at the head of Bradfield Canal of fifteen miles. The so-called exterior range, really only spurs, as shown on Vancouver's map No. 1, runs only from Observatory Inlet around Portland Channel and to Behm Canal.

and therefore could not possibly have been the continuous chain of mountains which the treaty contemplates as running from the 56th parallel to the 141st meridian.

Take the Russian map. The point at which the line departs from the head of Portland Channel is distant from the nearest point of the chain of mountains on this map about seven miles. The point where it strikes the 56th parallel is distant from the nearest chain of mountains twenty-five miles.

Take Pinkerton's Arrowsmith map (No. 8 of the U. S. Atlas). The point of the departure of the line from the head of Portland Channel is distant from the nearest chain of mountains fourteen miles. The point where it strikes the 56th parallel is distant from the nearest chain of mountains nineteen miles.

This section of the line runs across the Behm Canal, where it intersects Burroughs Bay, and gives a water line across that canal of three and one-half miles. It then cuts across the upper portion of an arm of Behm Canal, and cuts Bell Island in such a manner as to leave the northeasterly portion of it and a part of the mainland coast to Great Britain.

The treaty said that, after the line had ascended Portland Channel and run to the north to the 56th degree of latitude, it was to follow the crest of the mountains, but this line crosses transversely mountains forming the water-shed between Behm Canal and Portland Channel, which has peaks of over five thousand feet in height. It also crosses transversely the mountains which form the divide between the Chickamin River and the Leduc River, also the mountain mass which forms the divide between the Leduc and Unuk Rivers. None of these formations are parallel to the so-called mainland coast.

The British explanation for this part of the line will be found on page 62 of the British Case, as follows:

From the 56th parallel the line is to follow the crest of the mountains parallel to the coast, being by subsequent provisions those lying within not more than thirty miles of the ocean. The natural construction of the language seems to contemplate a point on the channel where the parallel and the coast mountains meet, but Portland Canal does not fulfill these conditions.

(Ibid., p. 62.)

How is it possible to say that the treaty means that the 56th degree of parallel and the coast mountains were to meet on Portland Channel? Vancouver's map showed that the head of Portland Channel was fourteen miles from the 56th parallel. Faden's map showed that the head of Portland Channel was twelve miles from the 56th parallel. The Russian map showed that the head of Portland Channel was seventeen miles from the 56th parallel. Arrowsmith's map showed that the head of Portland Channel was eighteen miles from the 56th parallel. All of these maps showed the parallel and the supposed chain of mountains to be coincident at a point northwardly from the head of Portland Channel. How is it possible, then, to say that the negotiator intended that there was to be a common point of the chain of mountains of the 56th parallel and of Portland Channel?

The British Case suggests that the word "elle" may possibly refer to Portland Channel. This would bring about a most extraordinary result, for if "elle" does refer to the Channel, and not to the line, the result is that the Channel must reach the 56th degree of latitude. It did not reach it, and all of the maps showed this.

The British Case states that the general result is that the description, does not fit the facts, and it is necessary to project lines not specifically designated in the treaty, and to take courses easterly, northerly and westwardly along three sides of a great square in order to bring Portland Canal into the line of demarcation. (B. C., p. 62)

This is a good reason why the negotiators never intended the line to be drawn from the head of Portland Channel in the way it has been drawn in the British Case. The Treaty expressly required Portland Channel to be brought into the line of demarcation, but did not require any such departure as is made to reach the 56th degree. It is such departure and not the bringing in of Portland Channel that carries the line along three sides of a great square. The great square is a creation of the British Case.

There are other mountains in the immediate vicinity and on the 56th parallel to the east of the point where the British line crosses it which answer the requirements of the Treaty equally as well as that selected in the British Case for the point of departure on the parallel.

The point of departure of the British line is not on the summit of the mountains. It crosses the parallel on a saddle half a mile south of peak "4070." There are higher places on the 56th parallel east of this as, for instance, the mountain mass which lies between the Ledue river and Burrough's Bay and those between the Chickamin River and the head of Portland Channel which are as much parts of mountains parallel to the general or mainland coast as are the formations selected by Great Britain. The contention, however, of the United States is that none of the mountains within ten marine leagues of the coast answer the requirements of the Treaty.

From the point of departure the line runs half a mile to peak "4070." From this peak it runs three and one-fourth miles to another peak "3890," thence for five miles to a peak "3700," and thence in four miles it strikes the shore of Bradfield Canal, which is five hundred feet deep.

In this entire distance the line skips from mountain peak to mountain peak, and there is no definite backbone or crest running from its beginning until it strikes Bradfield Canal.

The line crosses Bradfield Canal from a mountain peak on the south to a mountain peak on the north. There is nothing to indicate that this peak on the north is any part of a mountain formation which embraces this peak on the south. There are numerous mountains in the vicinity. No topographer can give a good reason why peak "3400" was selected on the north side of Bradfield Canal as a better summit than any one of three which are in the immediate vicinity. All are between three thousand and three thousand four hundred feet high. Peak, "3400", is one end of a mountain mass which trends in a general direction for eight or nine miles northerly, never descends below 2750 feet, and whose axis goes through five different peaks to peak "4600". This mountain mass trends northeasterly two miles to peak "6200", a total distance of about eleven miles where the surveyed area ceases. The British line, instead of following this indicated ridge from mountain "3400" up to mountain "6200", actually leaves that ridge to the east and goes westward. Why, when an elongated mass did look something like a portion of a ridge, did the British line merely take one end of that ridge, and then leave it, and refuse to follow it farther?

Continuing from peak "3400", which has been shown to be on the slope of an elongated mountain mass, the line runs four miles to peak "4334"; then three and one-half miles to peak "3590"; and in two and one-half miles more it descends into a small inlet which it crosses, and then in three and one-half miles it rises to peak "4500 to 4750". Thence in seven miles it runs to peak "3780". Between this point and a peak distant four miles, marked "3830", it drops about three thousand feet, into a deep ravine, and then ascends again to peak "3830".

Between the peaks, "3400" and "3830", the mountain mass rises eastwardly to higher summits, and the line, instead of attempting to reach these higher summits, takes lower summits between the peaks described.

From peak "3830", it runs to a point on the north side of the Stikine river, crossing that river less than six miles northeast of Point Rothsay to peak "4483".

(It may be well here to note that, including the British line under discussion, four different places have been contended for as the proper ones where the line of demarcation crossing the Stikine River should be drawn, and all of them were based on the theory that they were following the crest of mountains parallel to the coast.)

1. Chief Justice Begbie's line was eastwardly of the present line, and midway the line of 1878.

2. The line drawn by Mr. Hunter under the instruction of the Surveyor General of Canada, which is the line of 1878, shown on the map, is to the eastward of the present line, fourteen miles.

3. The line drawn on the map presented to the Joint High Commission in 1898 is drawn to the westward of the present British line.

4. The line now proposed by Great Britain.

It is three miles to the next peak marked "5700", and then four miles to Le Conte Bay, here less than one mile wide. In another mile the line reaches peak "3600". From this peak it is two and one-half miles to peak "5355", and as much more to peak "5860", which the line reaches after crossing the ice-filled valley about three thousand feet below these peaks. About one-half a mile to the eastward from peak "5860" lies another peak 6300 feet, and on the same mountain mass. This is entirely ignored.

From peak "5860", it is two miles to peak "5268"; but the line descends between these peaks to a slope of a glacier coming from the east, which it crosses.

The distance from "5268" to "4725" is a mile and a half. Most of this distance is across an intervening glacier sloping down from the higher summits marked "6980" and "7180", about five miles to the eastward. These are so much higher than the peaks selected for the British line that it is difficult to understand how it is possible for anybody to conceive that such a line does follow, as the treaty requires, the crest of the mountains.

From peak "4725", the line changes its course at an angle of about one hundred and six degrees, and runs to peak "4812", distant four miles, crossing the slope of Patterson glacier three thousand feet or so below these peaks. From peak "4812" the line runs to "4831", after crossing a deep ravine three thousand feet below the latter peak, and less than two miles from it.

This peak forms the western summit of a mountain mass represented on the British Commission Maps, as running east from this peak for about nine miles in the general direction of Devil's Thumb, which is

over nine thousand feet high, and the peak two miles southeast from Devil's Thumb over seven thousand feet high. This mountain mass can be traced on the British Commission Maps from peak "4881" to peak "5050", distant one and a half miles; thence five and one-half miles to peak "5500"; thence two and one-half miles to peak "6600".

At peak "4881", the British line cuts across the end of this mountain mass running east and west, and in contravention of the terms of the treaty, because, according to the treaty, the line must follow the crest of the mountains. Here this line cuts the mountain transversely.

From peak "4881" the line runs towards peak "4050", crossing Thomas Bay two and one-half miles from the first named point, where the width of Thomas Bay is one and one-fourth miles.

Peak "4050" is near the southern end of a mountain mass which trends in a northeasterly direction for seventeen miles paralleling the glacier which joins the Dawes and Baird glacier. This mountain mass is further defined as follows:—From peak "4050" four miles to peak "4500"; thence two miles to peak "5533"; thence two miles to peak "6700"; thence one and one-half miles to peak "6040"; thence five miles to latitude $57^{\circ} 20'$ and longitude $132^{\circ} 45'$. But the British line runs transversely across this mountain mass, and then in three miles reaches peak "4072". In another three miles it descends to about sea level and crosses a valley draining into Farragut Bay.

In another mile and a half it ascends to peak "4500" to $4750''$; thence in four miles to peak "4052". In three miles it goes down to sea level, crosses Port Houghton, which is here about a mile wide, and three miles further reaches peak "4275". Three miles west of peak "4275" is peak "5160". That is a peak eight or nine hundred feet higher than "4275". These peaks together form part of a mountain mass which lies on the north side of Port Houghton and which sweeps around towards the head of Endicott Arm.

Thus, it will be noticed, that there are two peaks forming a part of the mountain mass, and that the British have chosen for the line the lower of these two peaks.

The British line, disregarding the higher peak, continues to the north four miles to a point one and one-half miles east of peak "4700", and crosses the slope of this peak at an altitude of between thirty-five hundred and thirty-seven hundred and fifty feet. From this slope it runs four miles to peak "3210", having midway that distance descended to about sea level. From here in one mile it reaches peak "3250" to peak $3500''$, and from thence proceeds three miles to peak "3750" to $4000''$. From this point it descends two miles to Windham Bay, where it crosses half a mile of water. In two miles more it reaches peak "4290", a peak on the peninsula between Windham Bay and Holkham Bay.

From "4290", in three miles, it reaches "3110". In about four miles more it descends to sea level at the mouth of Holkham Bay, (which is here five miles wide), crossing Harbor Island which lies in the middle of the entrance. On the north of the entrance it strikes the shore of the narrow peninsula formed by Holkham Bay and Port Snettisham. For nine miles and a half it runs along this peninsula before it reaches peak "3100", and from this descends in two miles and a half to the sea shore of Port Snettisham. For one and a half miles it runs across the water and ascends again in two miles to peak "3748". From that peak it runs to peak "3588", but between the two again descends to sea level crossing Limestone Inlet, a little arm of the sea, near its head.

From Thomas Bay to Port Snettisham, it runs along mountains, which lie almost under the shadow of mountains to the eastward, which are half again as high. From peak "4881" below Thomas Bay to peak "3588", above Limestone Inlet, it descends to sea level, or nearly so, eight times, and the total number of peaks used between these two is but thirteen. Between Holkham Bay and peak "3588" the British line is nowhere as much as two miles from the sea, as represented by the Great Stephens Passage.

Starting at peak "3588", the line runs six miles toward peak "3475", which it reaches after going down to sea level within about two miles of the last named peak. Descending about three thousand feet in the next mile, it ascends to an altitude of a little over three thousand feet, and crosses Taku Inlet to "3441", distant five miles, two miles of this distance being along the surface of the sea.

Without regarding the higher mountains to the northward, the line there runs from peak "3441" to "3300" one mile, then one and one-half miles to "4175". Then making an angle of 118° it runs one and one-half miles to peak "3630"; thence for the same distance to peak "4250 to 4500", and thence two and one-half miles to peak "4071".

From peak "4071" it runs six miles to peak "3500" to "3750". Two miles before reaching the last named slope, it descends about three thousand feet into the valley of a glacial stream to nearly sea level. From peak "3500" to "3750" it descends in two miles, about three thousand feet, to the foot of the Mendenhall Glacier, which it crosses in two miles more. Then it ascends to peak "4322" in another mile.

Disregarding the higher peaks which form the water-shed between Taku Inlet and Lynn Canal, the line runs from peak "4322" to "4750", distant two and one-half miles, and thence to peak "5655" in two miles. Here it descends about two thousand feet to the Herbert Glacier, which it crosses and from which it ascends to peak "6010" distant three and one-half miles. Thence it proceeds one and one-half miles to peak "5124", and thence three miles to peak "5500-5750", after having crossed the slopes of Eagle Glacier. From here it proceeds three miles to peak "5799", where it turns at an angle of 122 degrees running two miles to "5790".

At peak "5790" it again changes its course, at about an angle of 126 degrees, running three and one-half miles to "5986", thence one mile to "5210", where it bends abruptly about (95 degrees) and reaches the head of Berners Bay within two miles, crossing the waters of that bay for three miles. Thence it proceeds one and one-half miles across a little peninsula above Point St. Mary, and then crosses Lynn Canal, which is here about five and one-half miles wide, ascending to peak "3452", which is south of Endicott River.

From this peak it runs to peak "4050" distant five miles, thence to "4760" distant four miles, thence to "4200", five miles, thence to "4140", six miles, and thence two and one-half miles to the sea level on the shore of Glacier Bay. In crossing the peninsula between Glacier Bay and Lynn Canal, it descends to nearly sea level in crossing the stream flowing into Hudson Bay Inlet and before reaching "4140" it descends again to nearly sea level.

In order to reach the shores of Glacier Bay, it necessarily leaves the mountains on the eastern shore of Lynn Canal, crosses the surface of Berners Bay and Lynn Canal and then crosses transversely the mountain masses lying between Lynn Canal and Glacier Bay, two of which

can be traced to Mt. Wright "6300", which is about eleven and one-half miles north of where the line crosses the 136th meridian in Glacier Bay.

What is especially noticeable and objectionable in this line from Berners Bay to Glacier Bay is:

I.

Whereas the line up to this point has been running northwest, or as Mr. King said, the ruling N. N. W., it makes at the head of Berners Bay, almost a right angle, and runs west by south, a complete change from the northwesterly direction so far followed.

Why is this complete change made? There is no chain of mountains here, no crest of the mountains running to the one side of Lynn Canal and reaching up on the other side of Lynn Canal to invite a line to be drawn from one side to the other. There is no indication of any chain of mountains from the head of Berners Bay to Glacier Bay. Then why should the British have directly changed the direction of the line and drawn it South by West across Lynn Canal, unless, indeed, it was so as to give to the British the head of Lynn Canal?

II.

Between Lynn Canal and Glacier Bay, there are mountain masses which have a certain parallelism to Lynn Canal, running North and South; the British line, instead of running along these mountain masses North and South, cuts then transversely, directly contrary to the words of the Treaty, which said "*the line was to follow the crest of the mountains.*"

From the shore of Glacier Bay, two and one-half miles west of peak "4140", the line follows the sea across Glacier Bay for about nine miles, rises for three and one-half miles to "3030", and then in one and one-half miles drops into a valley to about sea level, keeping at sea level for about two and one-half miles. In the next two miles it crosses transversely a small mountain mass, descends again into a low valley a mile wide, and then ascends to peak "3700" in three-quarters of a mile.

From peak "3700" to "3650" it crosses the sloping end of a glacier, lying midway between these peaks, which are four miles apart, and proceeds thence two and one-half miles to "4275". The greater part of this distance is across Brady Glacier in about latitude $58^{\circ} 26'$, which slopes from about latitude $58^{\circ} 43'$ at the North point to about $58^{\circ} 21'$ at the South, where it discharges into the ocean at the head of Taylor Bay.

Here again the line crosses transversely two glaciers, Brady Glacier and a branch of the same, without seeking at all to run along the top of the glacier. On the contrary, it runs right through the middle of the glacier, from East to West. All these glaciers which this line crosses, and there are a number of them, necessarily imply that they are formed by and are fed from water from some higher point, and yet the line disregards the higher point and seeks the lower point and cuts the glacier through from East to West at right angles to its trend.

From peak "4275", four and one-half miles it runs to "Mt. La Perouse 10758", thence three and one-half miles to "Mt. Dagelet

9550", thence four miles to "Mt. Crillon 12,750", and thence twelve miles to "Mt. Lituya 11,745", culminating in "Mt. Fairweather 15,287", in the next seven miles.

From peak "4275" to Mt. Fairweather it is drawn along the summits which mark the axis of the Fairweather range, whose trend is from Fairweather to Cape Spencer.

From Mt. Fairweather, it abandons the divide, leaving two summits "12,430" and "11,800", only three and one-half and four miles to the North and East, descends the slope of the Fairweather range, crosses the unsurveyed area immediately East of the mouth of Dry Bay, at an unknown elevation and in twenty-two and one-half miles reaches peak "5350".

From "5350" it descends 2,000 feet or more, in two and one-half miles, crosses the slope at a glacier and at a distance of six and one-half miles from "5350", crosses the Alsek River to a peak "3700", three miles beyond. This peak appears to be about three miles from the head of Dry Bay.

From peak "3700", it runs four miles to "3415", thence two and one-half miles to "3500", thence two miles to "4050", where it turns at an angle of about 80 degrees, crossing the slope of a glacier to "4500" distance one and one-half miles, thence to peak "3500" four miles, and thence to peak "4130" distant three miles.

The line runs from peak "4130" to "3510" distant six miles across the slope of a glacier. The last mentioned peak is about nine miles from the ocean. The divide in this locality between the Alsek River and the ocean appears to be about six miles northeasterly from the British line at this point.

From "3510" it runs to "3300", eight miles, four miles of which are across Yakutat Glacier near its foot. Thence in thirteen miles it goes to "5600" and crosses the slopes of many glaciers in this region. Thence it runs two and one-half miles to Mt. Unana, over 6500 feet high, and drops down from this mountain, in three miles to Disenchantment Bay, which is here about one and one-half miles wide. In so dropping it changes in a marked manner its bearing.

Whereas the line was running rather North by West, it changes to just about due West, making almost a right angle. *What is there in the treaty which justifies this extraordinary and unusual departure?*

Disenchantment Bay at this place is about one and one-half miles wide. From here the line runs from "Mt. Tebenkof 4280" feet, thence to Mt. Hendrickson six miles 4550 feet, thence to a peak three miles distant "4000 to 4250", thence four miles to Disenchantment Bay, which it again crosses, this time near its mouth where it is two and one-fourth miles wide; and thence to a peak "5000 to 5250", a total distance of about nine miles.

From Mt. Tebenkof to the second crossing of Disenchantment Bay, the mountains rise sheer from the ocean and form a peninsula which is quite detached from the St. Elias Alps.

The line from the crossing of the Alsek River to this point, has not followed the summit of the mountains, for to the eastward of Disenchantment Bay lie very much higher mountains, whose peaks as far as surveyed, reach an altitude of over 8,000 feet and appear to form the watershed between the Alsek River and Disenchantment Bay.

From peak "5250", the British line runs three miles to "6350", thence two and one-half miles to "6220", dropping 4,000 feet in one

and one-half miles to one of the branches of the Lucia Glacier about a mile wide, thence rising to peak "5500 to 5750" in three miles more. This peak is on the slope of a spur from Mt. Cook, which is over 13,000 feet high, seven miles north of it. From peak "5500-5750", it runs three miles across the Hayden Glacier to "5600", thence eight miles to "8350". About six miles of this distance is across the Marvin and Pinnacle Pass Glaciers.

From peak "8350" it runs three and one-half miles to "5600", thence four miles across the Seward Glacier to "5960", and thence seven miles to the "summit of the mountain ridge northwest of Agassiz Glacier".

Thence it proceeds seven miles to "11,565", a "mountain peak one-half mile East of the 141st meridian", which is one of the spurs of Mt. St. Elias which has an elevation of 18,000 feet, and distant three miles from it.

The last of these peaks "11,565" is the most remarkable selection, because within three miles of it and well within ten marine leagues of the coast (see B. C. App. page 285), stands Mt. St. Elias over 18,000 feet high, which has been the landmark of the explorers and surveyors from the earliest date. Yet Great Britain is undertaking, by drawing this line, to show that this peak Mt. St. Elias is not a part of the crest which the Treaty intended.

Beginning with peak "5500" the last thirty miles of this British line consists of seventeen miles of glacial ice lying at such an inclination, with its source high up in the passes of the St. Elias Alps, and its mouth at the ocean, as to conform in no way to the Treaty.

In addition to this minute description of the line particular attention is called to the following:

I.

From the point on the 56th Parallel to Mt. St. Elias, the line is about 440 miles long, and in this distance it crosses fourteen times, over thirteen different arms of the sea, and of the total distance, thirty-four miles is at the water level.

II.

For over one hundred miles, in over forty intersecting transverse valleys, it lies less than 1000 feet high.

III.

From Holkham Bay it runs to a point on the continent, opposite the western end of Gastineau Channel. Between those two points the distance is 46 miles and for this distance this line would leave the *lisière* a maximum width of about three miles.

The second arm of the sea intersected by the line is Le Conte Bay, (where the bay is less than one mile wide), on the line between the peak "5700" and peak "3600". The former on the south side is one of the highest points on an elongated mountain mass, whose axis lies at right angles to the trend of the coast and parallel with Le Conte Bay and Glacier. One and one-third miles along this axis is another peak of the same height, and six miles further in the same line is one

6080 feet in height. In following these summits the line would not descend below 2500 feet, but the proposed line appears not to note that the elongated mountain masses, without exception, lie for the next twenty miles transverse to the line of the coast and all culminating in the great ice-covered plateau, which feeds the Great Glacier of the Stikine, the Le Conte and the Patterson glaciers. The line, instead of maintaining a height of 2500 feet, descends to sea level.

The fourth point, Port Houghton, where the line seeks salt water, is in latitude $57^{\circ}20'$. The inlet is here about a mile in width and is crossed by the line connecting peak "4052" on the south side, with peak "4275" on the north. Peak "4052" and peak "4500-4750" which are on the south of this inlet, are four miles apart and are two of five peaks which rise over 4000 feet out of a mountain mass, about nine miles square, bounded by Port Houghton on the north and Faragut Bay and a stream emptying into it on the south and east. The two highest peaks of this square mountain mass were left to the east of the line and two are selected which happen to be in range with the peak "4275" on the north of said inlet.

This "4275" is in the axis of a mountain mass which follows closely the shore of Port Houghton and its principal tributaries. Directly east of the said peak and three miles away is peak "5152". This peak, about 900 feet higher than either peak followed by the line and the highest one in the immediate vicinity, was on the same transverse mountain mass and could be crossed by the line with less disregard of the topography than the course adopted, for between this proposed peak "5152" and the next peak north, the line would descend only to a point below 2,000 feet instead of descending as it does, to a point below 1,000 feet.

IV.

Peak "4290" and peak "3110", three miles apart, seem to have been chosen for the line as defining the summit of the peninsula between Wyndham Bay and Holkham Bay. In making such a selection one must keep faced westward entirely, for if one would look inland, and just across Endicott Arm, he would see summits tower from 1,000 to 2,000 feet above the selected peaks.

V.

In crossing the entrance of Holkham Bay, the line for the sixth time finds an expanse of sea. It is five miles in width on the N. N. W. line between peak "3110" just described, and "3100," the only peak selected on the peninsula between Holkham Bay and Port Snettisham. This whole peninsula can scarcely be called a mountain mass, for it barely reaches 3,000 feet at two points. And yet in its passage, the British line, from peak "3110" to peak "3100," eighteen and one-half miles is entirely below 3,000 feet, and is for four and one-half miles along the sea at Holkham Bay. It cuts an island (Harbor Island in Holkham Bay) in two, and is for seven miles below 1,000 feet, all in the face of the fact that within ten miles of this line inland there are at least five peaks over 5,000 feet in height, which could with equal show of reason have been strung out into a line most certainly better complying with the terms of the Treaty.

VI.

At Port Snettisham the line for the seventh time crosses an arm of the sea which is one and one-half miles wide. The mountains on either side which define the direction of the crossing are peak "3100," already described on the south side, and peak "3748," a lonely summit between Port Snettisham and Limestone Inlet. This mountain mass, rectangular in shape, has its elongation at right angles to the line. In the effort to keep the line close to the coast, the high peaks which are in sight from peak "3100" in all directions are ignored, peak "3748" is selected, and the line crosses transversely this mountain to plunge again to sea level.

VII.

Limestone Inlet, the eighth arm of the sea, is crossed near its head on the line between "3748" described above, and peak "3588". This last peak is on the western or eastward end of a mountain mass along which, in less than two miles, stands peak "3775". This ridge also has no sign of elongation in direction of the line, and nothing but its close proximity to the coast can be a cause for its selection in preference to "3775" just northeast of it.

VIII.

The ninth crossing of the sea occurs in latitude 58° 14' where the line in going from peak "3000-3250" to peak "3441", passes for two miles along Taku Inlet. This peak "3000-3250," a mere spur, related as it is to the neighboring mountain masses, is a remarkable selection. To reach it from the next point of the line peak "3485", it was necessary to leave a transverse mountain mass, descend to below 500 feet and ascend abruptly. In fact, all the mountain masses between Port Snettisham and Taku Inlet have been selected at almost right angles to the line, and yet the line, with the greatest of ease, but in entire disregard of the topographical facts, jumps from one ridge to the next, the intervening space descending to about sea level.

In crossing Taku Inlet, the selection of peak "3441" seems reasonable, but the peak selected on the opposite side would seem to be the very last choice. Directly across the inlet from "3441" stand peaks "4625" and "4300" towering over 1000 feet above the spur which was selected.

IX.

Where the line at the crossing of Lynn Canal takes an angle of 95 degrees, it does not follow a general line of the coast, which Mr. King speaks of as "the ruling N. N. W. of the coast", because it runs nearly West by South. In running West by South from peak "5210", East of Lynn Canal, until it crosses Glacier Bay, it parallels Icy Strait, which Mr. King says

"cuts in . . . at right angles to the valley of Glacier Bay and the general trend of the mountains."

X.

If the crossing of Lynn Canal be applied to maps which were before the negotiators at latitude 58° 43', it appears almost exactly fifty miles from the mountains which were intended by the negotiators.

EXTRACTS FROM VANCOUVER'S NARRATIVE, SHOWING HOW THE MOUNTAINS APPEARED AS SEEN FROM HIS VESSELS AND BOATS.

(Edition of 1801, in six volumes.)

(Volume 4.)

July 21. Between Dundas Island and mainland.

Page 117: "The more interior country was composed of a lofty range of mountains covered with perpetual snow."

July 23. In Observatory Inlet.

Page 125: "The interior country was, however, still composed of lofty, barren, and snowy mountains."

July 24. In Observatory Inlet.

Page 130: "The land of the shores which we had thus traced, was, comparatively speaking, low, yet the interior country rose suddenly, and terminated our view by a range of high barren mountains, mostly covered with snow."

July 28. In upper part Portland Channel.

Page 138: "The shores of this inlet were nearly straight, and in general little more than a mile asunder, composed mostly of high rocky cliffs, covered with pine trees to a considerable height; but the more interior country was a compact body of high barren mountains covered with snow."

August 7. In Canal de Revilla Gigedo.

Page 155: "The opposite, or western shore, particularly to the south of the Canal de Revilla Gigedo, seemed to be much broken. The shores in most directions were low, or of a moderate height; but the more interior country was composed of mountains covered with snow, not only in the eastern quarter, but to the northward and westward."

August 8. East of Canal de Revilla Gigedo.

Page 157: "The surrounding country consisted of a huge mass of steep, barren, rocky mountains, destitute of soil; whose summits were perpetually covered with snow. Excepting at the head of the arm where the land was low, these mountains rose in nearly perpendicular cliffs from the water's edge, producing only a few scattered dwarf trees."

Page 160: Engraving of "The New Eddystone" in Behm's Canal, showing snow-covered mountains in background.

August 9. East of "Eddystone Rock," Behm Canal.

Page 161: "The examination of this insignificant branch, winding between an immense body of high, barren, snowy mountains, occupied the remainder of the day."

August 10. General observation.

Page 162: "Under these considerations, and well knowing from experience that all the small branches leading to the eastward either terminate at the foot of the lofty range of rugged mountains, or else form into islands parts of the shores of these inlets, I determined to decline their further examination," etc.

August 20. Moira's Sound.

Page 207: "The land in the neighborhood of Moira's sound is high, and rather steep to the sea; but as we advanced beyond Wedge island the straight and compact shores were more moderately elevated, and the interior country was composed of lofty, though uneven mountains, producing an almost impenetrable forest of pine trees from the water side nearly to their summits, but by no means so high as those we had been accustomed to see in the more inland countries."

September 29. Branch between Point Alexander and Point Hood.

Page 241: "Both shores were nearly straight and compact, and were about half a mile asunder as far as to this extent; but here they became much broken, and the supposed continental shore, extending N. 20 E., formed a narrow arm about a league and a half long, which was terminated in latitude 56° 47', longitude 227° 21', by shoal water, at the edge of a low plain producing very long grass, behind which rose lofty barren mountains covered with snow."

September 7. Between Duke of York's island and Bushy islands.

Page 251: "The clearness of the weather gave us a very perfect view of the adjacent shores bounding the horizon in every direction. To the westward the distant land was moderately elevated and appeared to be similar to that we had generally found along the sea coast; of an uneven surface and very much divided by water."

September 16. Affleck's Channel.

Page 265: "The sides of this channel which, after Admiral Affleck, I named Affleck's Channel, were mountainous, but were not so steep as the shores of the more interior country. Its termination was formed by low, flat land covered with trees that seemed to extend without interruption as far as could be discerned in a NNW. direction, through which flat country several small streams of fresh water flowed into the channel."

September 16. Same neighborhood.

Page 266: "The northernmost and southernmost (of these bays) have several rocks and islets about them, and the neighboring country is moderately elevated, of an uneven surface, and is covered with dwarf pine and other trees."

September 20. Northwest extremity of Prince of Wales Archipelago.

Page 276: "This (Mount Calder) is conspicuous in many points of view, not from its superior elevation, when compared with the mountains I have had occasion to notice on the continent, but from its height above the rest of the country in its immediate vicinity, and from its being visible in various directions at a great distance."

VANCOUVER'S REFERENCES TO MOUNTAINS AND MOUNTAIN RANGES SEEN ALONG THE COAST IN HIS VOYAGE IN THE YEAR 1794.

From Mount St. Elias to Cross Sound.

(Volume 5.)

Page 348. Engraving of Mount St. Elias and general view of the coast at that point.

Page 350: "Eastward from the steep cliffs that terminate this bay, and from whence the ice descends into the sea, the coast is again composed of a spacious margin of low land, rising with a gradual and uniform ascent to the foot of the still connected chain of lofty mountains, whose summits are but the base from whence Mount St. Elias towers majestically conspicuous in regions of perpetual frost."

Page 351: "A point which I named Point Manby, and which I took to be the west point of what in Mr. Dixon's chart is called Admiralty Bay, bore N. 39 E., distant seven leagues; beyond which, high distant snowy mountains were seen stretching to N. 80 E."

Page 353: "We bore away along the coast, which from port Mulgrave is composed of a low border, well wooded, extending from the base of the mountains into the sea."

Page 356: "We had now an extensive view of the seacoast, stretching by compass S. 77 W. to N. 86 E., within which limits Mount St. Elias and Mount Fairweather rose magnificently conspicuous from the still-continued range of lofty snow mountains. * * * In this situation Mount St. Elias, being the westernmost land in sight, bore by compass N. 73 W.; Mount Fairweather was at this time obscured by clouds."

Page 357: "In consequence of which he (Captain Cook) was prevented noticing the extensive border of low land that stretches from the foot of the vast range of lofty mountains and forms the seashore. The irregularity of the base of these mountains, which retire in some places to a considerable distance, and especially in the part now alluded to, would, on a more remote view than we had taken, lead the most cautious observer to consider the appearances in the coast as indicating deep bays or openings likely to afford tolerable and even good shelter."

Pages 358-359: "Where this low country was not intersected by the inland waters, it was tolerably well wooded; but as we advanced to the eastward this border became less extensive, was more elevated, and much less covered with wood, and for a few miles totally destitute of either wood or verdure, and, like that part

before noticed between Point Riou and Point Manby, was composed of naked, rugged fragments of rocks of various magnitudes, lying, as it were, in the front of Mount Fairweather, like those on the shore before Mount St. Elias.

"The base of this lofty range of mountains now gradually approached the seaside, and to the southward of Cape Fairweather it may be said to be washed by the ocean; the interruption in the summit of these very elevated mountains mentioned by Captain Cook was likewise conspicuously evident to us as we sailed along the coast this day, and looked like a plain composed of a solid mass of ice or frozen snow, inclining gradually towards the low border, which, from the smoothness, uniformity, and clean appearance of its surface, conveyed the idea of extensive waters having once existed beyond the then limits of our view, which had passed over this depressed part of the mountains, until their progress had been stopped by the severity of the climate, and that by the accumulation of succeeding snow freezing on this body of ice a barrier had become formed that had prevented such waters from flowing into the sea."

Page 360-361: "We were enabled to keep within five miles of the coast, which was now again well wooded, and from Cape Fairweather took a direction S. 43 E.; it is steep and intire, with the exception of one small opening that had the appearance of being likely to afford shelter for shipping; but it is completely bounded at a little distance by steep, compact mountains, which are a continuation of the same undivided range stretching to the eastward."

Page 372: "The whole, apparently, was well wooded, and in two places it had the appearance of having small inlets at the back of the shoal; but the close-connected range of lofty, snowy mountains, running nearly parallel to the coast at no great distance, plainly showed the limits of their extent, beside which there was no channel through the shoal by which they could have been approached."

Page 385: "The shores were composed of a continuation of the low border, extending from the foot of the mountains to the seaside; they were nearly straight and compact and were bounded by ice or frozen snow, which also greatly abounded in the above opening, which obtained the name of Digges's Sound."

Page 389: "Digges's Sound was the only place in the bay that presented the least prospect of any interior navigation, and this was necessarily very limited, by the close connected range of lofty snowy mountains that stretched along the coast at no great distance from the seaside."

Cross Sound and Lynn Canal.

Page 421: "To the north and east of this point (Point Dundas) the shores of the continent form two large open bays, which were terminated by compact solid mountains of ice, rising perpendicularly from the water's edge, and bounded to the north by a continuation of the united lofty frozen mountains that extend eastward from Mount Fairweather."

Page 424: "Both sides of this arm (Lynn Canal) were bounded by lofty stupendous mountains, covered with perpetual ice and snow, whilst the shores in this neighborhood appeared to be composed of cliffs of very fine slate, interspersed with beaches of excellent paving stone."

Page 426: "Along the edge of this shoal the boats passed from side to side in six feet water, and beyond it the head of the arm extended about half a league, where a small opening in the land was seen, about the fourth of a mile wide, leading to the northwestward, from whence a rapid stream of fresh water rushed over the shoal; but this, to all appearance, was bounded at no great distance by a continuation of the same lofty ridge of snowy mountains so repeatedly mentioned as stretching eastwardly from Mount Fairweather, and which, in every point of view they had hitherto been seen, appeared to be a firm and close-connected range of stupendous mountains, for ever doomed to support a burthen of undissolving ice and snow."

Page 427: "It may reasonably be presumed that this stream is alone indebted for its existence to the dissolution of the snow and ice in its vicinity at this season of the year; as it seemed to be too inconsiderable, and the adjacent mountains appeared to be too compact to admit of its deriving its source from any other cause."

* * * * *

"But our party having a more important object to pursue than that of receiving new visitors, declined the proposed civility, and returned down the arm, along the eastern shore, which was low, indented into small bays and coves, and appeared to be a border that extended from the base of the mountains that lie behind it, and which took a direction S. 40 E., $4\frac{1}{2}$ leagues to a point that obtained the name of Point Seduction."

Page 428: "This branch, after winding in a westerly direction about three miles further, terminated this extensive arm in its northwesterly direction by low land

formed immediately at the foot of high stupendous mountains, broken into deep gullies, and loaded with perpetual ice and snow."

Page 429: "On this occasion it may not be improper to remark that the upper part of this arm, which, after the place of my nativity, the town of Lynn, in Norfolk, obtained the name of Lynn Channel, approaches nearer to those interior waters of the continent which are said to be known to the traders and travelers from the opposite side of America than we had found the waters of the North Pacific penetrate in any former instance. This approximation is towards the southwest side of the Arathapescow Lake, as laid down in Captain Cook's chart, from which its distance is about three hundred and twenty geographical miles; but from the close connection and continuation of the lofty snowy barrier, so frequently before adverted to, trending southeastward and nearly parallel to the direction of the continental shore, little probability can remain of there being any navigable communication even for canoes between such waters and the North Pacific Ocean, without the interruption of falls, cataracts, and various other impediments."

Volume 6.

Below Lynn Canal.

In Stephens's Passage.

Page 20: "The opposite or northeast side of this northern branch is composed of a compact range of stupendous mountains, chiefly barren, and covered with ice and snow."

Admiralty Inlet.

Page 24: "Whilst the shores of the continent, bounded by a continuation of those lofty frozen mountains, which extend southeastward from Mount Fairweather, rose abruptly from the water side, and were covered with perpetual snow, whilst their sides were broken into deep ravines or vallies, filled with immense mountains of ice."

Off Point Salisbury.

Pages 26, 27: "From the shores of this basin a compact body of ice extended some distance nearly all round; and the adjacent region was composed of a close connected continuation of the lofty range of frozen mountains, whose sides, almost perpendicular, were formed entirely of rock, excepting close to the water side, where a few scattered dwarf pine trees found sufficient soil to vegetate in; about these the mountains were wrapped in perpetual frost and snow. From the rugged gullies in their sides were projected immense bodies of ice, that reached perpendicularly to the surface of the water in the basin, which admitted of no landing place for the boats, but exhibited as dreary and inhospitable an aspect as the imagination can possibly suggest. * * * The examination of this basin, &c. engaged the party until near noon of the 11th, when they returned along the eastern shore, which is a continuation of the same range of lofty mountains rising abruptly from the water side; by dark they reached the island mentioned on the 7th, as lying in the middle of Stephens's passage."

Off Point Walpole.

Page 30: "It is bounded by lofty mountains, and from their base extends a small border of low land forming the shores of the harbour, which I called Port Houghton."

In Frederick Sound.

Page 31: "When the weather became fair and clear, and shewed their situation to be before a small extent of low, flat land, lying immediately before the lofty mountains, which here rose abruptly to a prodigious height immediately behind the border. A few miles to the south of this margin the mountains extended to the water side, where a part of them presented an uncommonly awful appearance, rising with an inclination towards the water to a vast height, loaded with an immense quantity of ice and snow, and overhanging their base, which seemed to be insufficient to bear the ponderous fabric it sustained, and rendered the view of the passage beneath it horribly magnificent."

Page 34: "Mr. Whidbey observes that in no one instance during his researches, either in the several branches of Prince Williams Sound, in those extending from Cross Sound, or in the course of his present excursion, did he find any immense bodies of ice on the islands; all those which he had seen on shore were in the gullies or valleys of the connected chain of lofty mountains so frequently mentioned and which chiefly constituted the continental shore from Cook's Inlet to this station, though in different places these mountains are at different distances from the seaside.

He likewise observes that all the islands, or groups of islands, were land of a moderate height when compared with the *stupendous mountains* that compose the continental boundary, and were still seen to continue in a southeastern direction from this shallow passage, whilst the land to the westward assumed a more moderate height, was free from snow, and produced a forest of lofty pine trees. These observations more particularly applying to the former than to the subsequent part of this survey, I have, for that reason, thought proper to introduce them in this place, and shall now resume the subject of Mr. Whidbey's excursion."

In Frederick Sound.

Page 45: "To the eastward were seen high, distant mountains covered with snow, but the land in their neighbourhood was, comparatively speaking, low, of a very uneven surface, much divided by water, and covered with wood."

Off Point Macartney.

Page 52: "Mr. Johnstone stated that the part of the coast that had claimed his attention during his last excursion is a peninsula, connected with the more eastern land by the last-mentioned narrow isthmus, and that it is by no means so high or mountainous as the land composing the adjacent countries on the opposite or north-eastern side of the sound, which at no great distance consisted of very lofty, rugged, dreary, barren mountains, covered with ice and snow."

MAPS AND CHARTS EXISTING PRIOR TO THE TREATY OF 1825.

From the cases made by the contestants it appears that the following maps and charts of the region in question were in existence when the treaty of Feb. 28, 1825, was signed.

Map No. 1, American Appendix, by Arrowsmith, Jan. 1, 1795, Additions to..	1796
Map No. 1, British Atlas. Vancouver General Map, N. W. Coast of America.	1798
Map No. 2, British Atlas & No. 4 American Atlas, "Portland Canal &c." Vancouver.....	1798
Map No. 3, British Atlas & No. 5 American Atlas, Vancouver. "Lynn Canal, &c.".....	1798
Map No. 5, British Atlas, No. 6, American Atlas, Quartermaster-General's Russian Map.....	1802
Map No. 2, American Appendix, "von Reichard," Weimar.....	1802
Map No. 3, American Appendix, Reichard, Weimar.....	1803
Map No. 7, British Atlas, Langsdorff's Map.....	1803-1805
Map No. 7, American Atlas, Walch's Map of North America, Augsburg.....	1807
Map No. 4, American Appendix, Cary's New Universal Atlas, London.....	1808
Map No. 5, American Appendix, Arrowsmith.....	1811
Map No. 6, American Appendix Weimar Charte von Nord-America.....	1814
Map No. 7, American Appendix Neele's General Atlas, London.....	1814
Map No. 8, American Appendix, Arrowsmith.....	1814
Map No. 9, American Appendix Thomson's New General Atlas, Edinburgh..	1814
Map No. 10, American Appendix, Brue's Grand Atlas, Paris.....	1816
Map No. 8, American Atlas, Pinkerton's Modern Atlas "after Arrowsmith".	1818
Map No. 9, America Atlas, Brue's Map of North America 1815 to.....	1819
Map No. 11, American Appendix, Arrowsmith.....	1819
Map No. 12, American Appendix, Brue's Atlas.....	1819
Map No. 13, American Appendix, New General Atlas, John Thompson, Edinburgh.....	1821
Map No. 8, British Atlas, Arrowsmith coloured.....	1822
No. 9 of British Atlas, Arrowsmith uncoloured.....	up to 1822
No. 10 of American Atlas. Map of America by A. Arrowsmith, Hydrographer to His Majesty, London.....	addition to 1823
No. 10 of British Atlas and No. 14 American Appendix, Faden's Map.....	1823
No. 11 of British Atlas, Faden's Map.....	1824

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